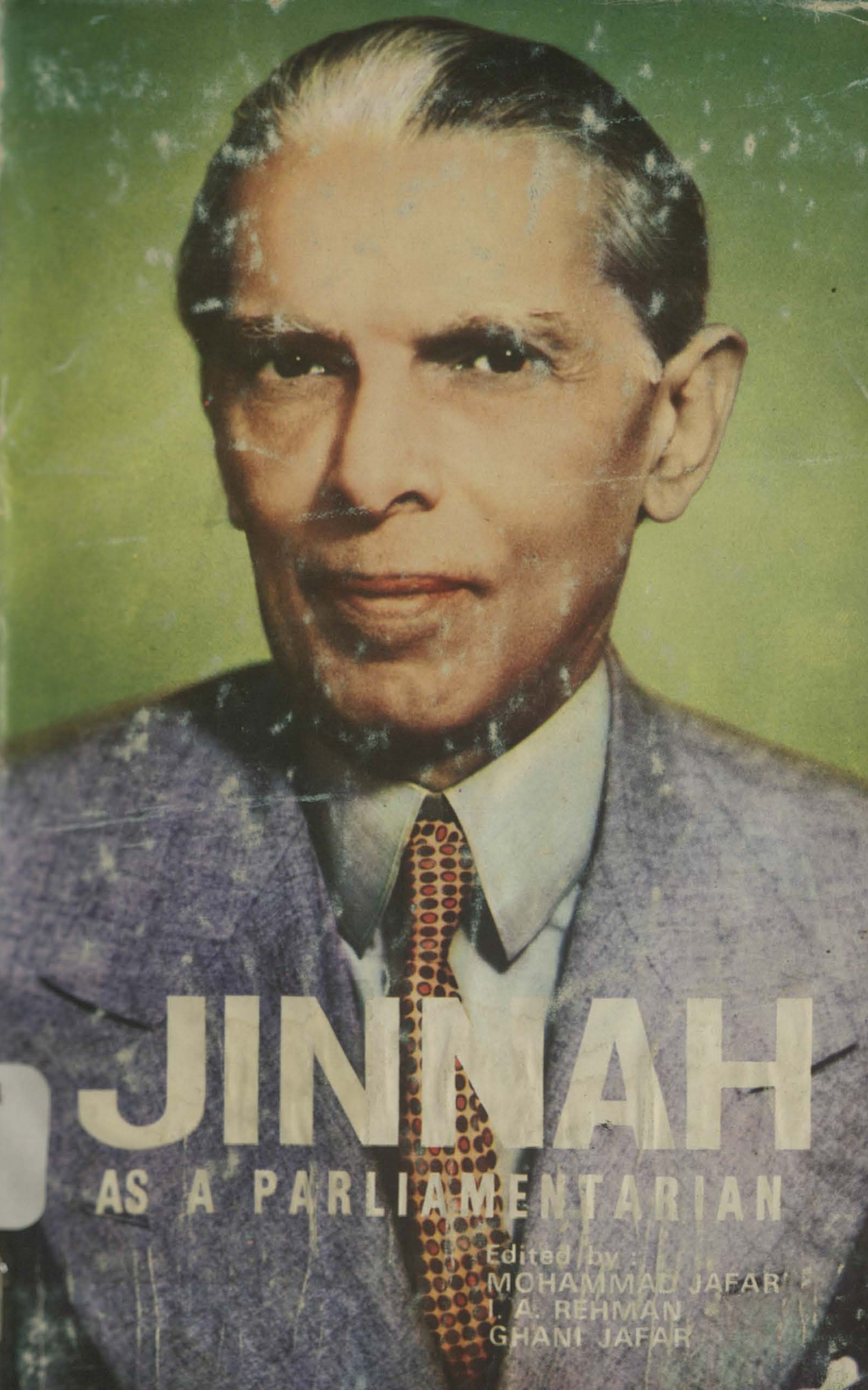


JINNAH

AS A PARLIAMENTARIAN

Edited by :
MOHAMMAD JAFAR
I. A. REHMAN
GHANI JAFAR

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Azfar Associates

Published by
AZFAR ASSOCIATES
1479-C, G 6-1/3, Islamabad (Pakistan)
1977

Price Rs. 75-00

Printed at the Awami Press Ltd.,
4-Lawrence Road, Lahore.

CONTENTS

FOREWORD

If the greatness of a man be measured by his ability to deflect the stream of events towards the goal marked out by his own vision—and there can hardly be a more unerring yardstick—Jinnah must rank among those few in human history whose greatness is beyond cavil. There was no aspect either of the nationalist struggle or of the life of the nation which escaped the impact of his personality or the imprint of his ideas. It is impossible, in the short space of a foreword, even to review the achievements of such a many-splendoured genius, I shall, however, make an attempt to indicate some qualities of his life and character.

Hindu propaganda and British animosity have combined to paint the All-India Muslim League in grotesquely reactionary colours. But the recorded words of its supreme leader tell a different tale. Several of Jinnah's speeches attest to the urgency he attached to solving the economic problems of the nation. In his message to the annual session of the Punjab Muslim Students Federation, held at Rawalpindi on March 7-8, 1942, he asserted that it was "the economic and social uplift and the education of the people" that constituted "the true foundation of a nation or a community". He demonstrated equally his solicitude for the depressed and the poor and his low opinion of the exploiter and the rich in his address to the April 1943 Muslim League session at Delhi. His harsh language was an index of his deep feeling. "Here I should like to give a warning to the landlords and capitalists who have flourished at our expense by a system which is so vicious, which is so wicked and which makes them so selfish, that it is difficult to reason with them. The exploitation of the masses has gone into their blood. They have forgotten the lessons of Islam. Greed and selfishness have made these people subordinate to the interests of others in order to fatten themselves......I have visited villages. There are millions and millions of our people who hardly get one meal a day. Is this

civilisation? Is this the aim of Pakistan? Do you visualise that millions have been exploited and cannot get one meal a day! If that is the idea of Pakistan, I would not have it."

By the close of 1945 he had convinced himself of a dire necessity for widespread and fundamental State enterprise. Speaking to a representative of the Associated Press of America on the eighth of November that year, he said that he personally hoped that Pakistan's "major industrial and public utility services" would be socialised. He expressed his belief that essential key industries ought to be controlled and managed by the State. The basis of the future economic structure of the country could not have been outlined more lucidly.

After the achievement of independence he offered an equally clear description of the social path he wanted the nation to tread. Addressing a public meeting at Chittagong on 25th of March, 1948, he spoke these words in reply to the address of welcome: "You are only voicing my sentiments and the sentiments of millions of Mussalmans when you say that Pakistan should be based on sure foundations of social justice and Islamic socialism which emphasise equality and brotherhood of man. Similarly you are voicing my thoughts in asking and in aspiring for equal opportunities for all. These targets of progress are not controversial in Pakistan." The reader should note the use of the phrase *Islamic socialism*.

In the modern age of developing economy and participatory polity the line separating the economic from the political fabric of State is non-existent. Jinnah was too well-schooled to ignore this reality of public life. He not only promised Islamic socialism as the prescribed economic system, but also emphasised its complementary attribute—political democracy. In fact, he used, for this political democracy, the precise words of "people's government" in the April 1943 Delhi Muslim League session to which I have already referred.

His liberal strain of thought is equally reflected in his repeated insistence that Pakistan shall not be a theocracy. Again and again he told his visitors and hearers that obscurantism, ambiguity and reaction had no place in the faith of

Islam and its public and societal manifestations. In any case, he said in his broadcast talk to the people of the United States of America in February 1948, Pakistan "is not going to be a theocratic State—to be ruled by priests with a divine mission".

But it would be a travesty of logic to infer from these pronouncements that the Quaid was a materialist with no spiritual ballast to his beliefs. On the contrary, his liberalism buttressed his faith in himself and his Maker, heightened his sensitivity to economic injustice and social imbalance, set fire to his belief in national independence and political freedom, and broadened his vision of the future. The philosophy by which he lived is summed up by a Dutch proverb which he quoted at the close of his presidential address to the special Pakistan session of the Punjab Muslim Students Federation held on the 2nd of March, 1941:

> Money is lost, nothing is lost;
>
> Courage is lost, much is lost;
>
> Honour is lost, most is lost;
>
> Soul is lost, all is lost.

Jinnah brought this liberalism, among so many other qualities, to bear upon his work in the legislature. Whichever House he graced with his presence, be it the Imperial Legislative Council or the Indian Legislative Assembly or the Pakistan Constituent Assembly, gained from his parliamentary gifts. It is this aspect of his public career that the editors have brought out so well in the present compilation. By making a study of Jinnah's legislative activities and achievements they have shed much-needed light on an important facet of his life.

The speeches, interventions and exchanges reproduced in the following pages show all the virtues of Jinnah the legislator: a sense of timing, the power to answer back, a good memory which treasured the significant and jettisoned the insignificant, the thrust of argument, the quick repartee, the capacity to share a joke. More importantly, however, they

point to five major qualities which made the Quaid-i-Azam a parliamentarian without peer. First, the sheer amount of hard home-work he must have done before choosing to speak on a Bill or a motion; the scope of his information and the relevant comparisons he so effortlessly made could not have come without long preparation. Secondly, he was an artist in marshalling the arguments of the case; he built up his own case brick by brick and stone by stone, like an architect who loves the symmetry of what he builds, and demolished the opposition's case point by point as if divinely inspired.

In the third place, he felt a personal involvement with all measures which concerned civil liberties; his deep-rooted sense of freedom could not brook any abridgement of the fundamental rights of the citizens even under an imperial Power. Fourthly, there was not a shade of communalism or partisanship in his approach to legislative work; the religion of the Member who introduced a Bill or moved a Resolution and the political complexion of the topic before the House did not affect his cross-bench mind which tested every matter on the touchstone of good sense and political wisdom. Finally, he spoke and voted without fear of criticism or favour of reward; he carried the courage of his conviction to a point of no return where principle was every thing and hypocrisy the vilest of evils.

I congratulate the editors of this volume on having done a worthwhile piece of work with devotion, industry and good sense. Such treatment of Jinnah was badly needed, and I am confident that the readers of this book will gain a fresh understanding of what made Jinnah great.

ABDUL HAFEEZ PIRZADA
Minister for Education
and Provincial Co-ordination,
Government of Pakistan.

Islamabad
January 15, 1977.

INTRODUCTION

This book forms part of an effort that we consider necessary to probe the various aspects of Quaid-i-Azam Mohammad Ali Jinnah's personality and the evolution of his thought. A great deal has been written about his work as the leader of the movement for Pakistan, as the guiding light of the Muslim League in the final and all-important phase of its existence, even as a lawyer, however inadequate all of it may be. But the Quaid-i-Azam was also one of the most outstanding parliamentarians of his age. He became a member of the country's highest legislative body in his early thirties and, except for a short period, he enjoyed this privilege for the next 39 years. In our humble opinion this aspect of the Quaid-i-Azam's life has not received the scholars' attention to the extent that it deserved. This is not to deny the value of the painstaking work by several people to compile the Quaid-i-Azam's speeches in the legislature. Nevertheless, we came to the conclusion that a collection of his parliamentary speeches during a particular period or a selection based on what was considered relevant to the present-day reader in Pakistan was likely to distort the perspective as well as the portrait of the Quaid. There is no doubt in our mind that everything done by the Quaid-i-Azam and every word spoken or written by him is relevant to the study of the man and his times. It was our desire to produce a complete record of Mr. Jinnah's parliamentary career, but apart from limitations of our resources, we discovered, to our dismay, that complete volumes of the proceedings of the Indian Assemblies were not available in Pakistan. Efforts to procure them from abroad did not bear fruit in the short time at our disposal. This is a matter that ought to interest all such institutions and individuals as are concerned with research on the Quaid-i-Azam. As for us, we had no option but to limit the scope of the present volume to a selection. Whether we have succeeded in making this selection representative of the various phases of Mr. Jinnah's

career or of the variety of matters that interested him at different times, it is for the reader to judge. It may, however, be pertinent to point out that while selecting a speech, or a set of speeches on a single subject, for inclusion in this book the important consideration in our mind has not been its merit in an academic sense but the light that it throws on one of the Quaid-i-Azam's less known interests. Besides, even on such transitional questions as the system of importing goods on Government account or recruitment for services in the twenties, not only matters of day to day importance were involved, but the Quaid-i-Azam also dealt with issues that continue to confront people in different societies. In the course of his long parliamentary career Mr. Jinnah modified his views on many issues but there are quite a few on which his views did not change, and could not have changed, at all. His thoughts in the latter category offer useful clues to the Quaid-i-Azam's creed which, even in the country he created, has been talked about more and studied much less.

We find that the first thing that seriously interested Mr. Jinnah when he was elected to the Indian Legislative Council, constituted under the Councils Act of 1909, was the law governing the Muslim trusts created by owners of property for the benefit of their descendants. Mr. Jinnah must have become aware of the difficulties the Muslims desirous of establishing such trusts were facing in the course of his practice as a successful civil lawyer, but once he was convinced that the remedy lay with the legislature and not with the Courts of law, he piloted his Mussalman Wakf Validating Bill with a remarkable zeal. While trying to remove the difficulty created by a Privy Council decision he made sure that his Bill did not breach the established Muhammadan Law. His speeches on the Bill, the first by a private Member to become law in India, reveal Mr. Jinnah in the role of an accomplished advocate who had a complete mastery over his subject and who was motivated by a strong urge to act in public good. It should be a matter of interest to readers that while, as one elected from a Muslim constituency under separate electorates, Mr. Jinnah showed a special interest in problems concerning his religious

community, he did not confine himself to the task of solving its legal problems. It was not till many years later, in 1937, that he again took a significant part in reforming the law as applicable to the Muslims. But when called upon to shoulder the responsibility of piloting the Shariat Bill, that somebody else had moved, he again proved himself a worthy champion of his community's interests and aspirations.

The second decade of the present century witnessed an upsurge of the nationalist sentiment in the land, leading to a sharpening of the conflict between the people and their alien masters. The expediency of preserving their power eroded the British rulers' concept of the rule of the law. The fight for civil liberties began and it found in Mr. Jinnah a staunch campaigner. In his opposition to the infamous Rowlatt Bills on the floor of the Indian Legislative Council, Mr. Jinnah was second to none and he eventually earned the unique distinction of resigning from the legislature in protest against the passage of the black laws. Till then he was looking at the question of civil liberties exclusively from the point of view of a man of law and not as a political agitator. His speeches on the subject may not have the political anger and the emotional fire that characterised the agitation launched by the nationalist leaders against the Rowlatt Bills, but his indignation over unlawful acts committed in the name of law, and the consistency with which he resisted the executive's encroachment on the rights of the citizen to judicial protection, establish him as one of the foremost defenders of civil liberties produced by our sub-continent. He attached high priority to the freedom of expression and the rights and privileges of the Press, and the three speeches on this subject, (Role of the Press, the Horniman Case, and Rights of Press and the Assemblies) included in this volume, reflect on principles and policies that he considered immutable. Equally unchangeable was the Quaid-i-Azam's faith in the right of every accused to a fair trial, as is most vividly brought out in his speech in the chapter, 'Trial in Absentia.' Again Mr. Jinnah's attitude was that of a man wholly inspired by faith in a just, judicial process. He made no attempt to conceal his personal disapproval

of the terrorist movement and the emotional outpourings of the kind that Dewan Chamanlal or Mr. Jayakar could entrance their listeners with were alien to his nature. Yet in his own coolly logical and convincing manner he played a major role in foiling the attempt to make trial in absentia lawful.

We have included in this volume two speeches by Mr. Jinnah on legislation governing marriage. Both of these highlight his commitment to social reform, a subject he approached purely from a progressive, secular point of view. He defended the Muslims' right to fight for the liberation of the Hindu women from the bonds of evil custom by conceding the Hindus a right to do the same if the issue was one of Muslim women's emancipation. Taking part in the debate on the Hindu Marriage Bill he refused to condone Hindu women's suffering under the caste system only because he belonged to the Muslim community. This feature of Mr. Jinnah's personality came into even sharper focus when he quietly managed to make the Sarda Bill, intended originally to check the marriage of Hindu children, applicable to Muslims as well. In his memorable speech on that Bill Mr. Jinnah expounded a fundamental principle of law-making that should at least be honoured in the country of his making. This was his insistence that marriage was a contract between a man and a woman and had nothing to do with religion. He repudiated the view, advanced by the ulema, that elected representatives of the people could not draft marriage legislation independent of their counsel.

The Quaid-i-Azam's contribution to the Assembly debates on India's constitutional advance towards representative rule was eventually superseded by his struggle to achieve a separate homeland for the Muslims. This battle was fought largely outside the Assembly. However, we have chosen three of his speeches on the subject from the period before he came to the realisation that the Muslims of India had a separate goal to fight for. These speeches throw considerable light on Mr. Jinnah's impressive credentials as a nationalist believer in freedom. They also show him as a realist inasmuch as he carved his ideals in accordance with the level of conscious-

ness of the people and their capacity to rule by themselves. In the same context should be read his speeches on colonial services, Indianisation of the Army and imports on Government account. They show that, contrary to the general impression, Mr. Jinnah was as shrewd an expert on the mechanics of governance as he was dedicated to the ideal of self-rule. If his advocacy of the principle of a native bureaucracy reflected on his nationalist credo, his deep interest in the maintenance of a national army, to the extent that he was acknowledged an expert on the subject, revealed his realistic appreciation of the instruments of power in any society.

From the Quaid-i-Azam's last years in the Indian Legislature we have selected two brief speeches—on INA trials and the use of Indian troops in Indonesia—which were important because they show the Quaid-i-Azam's response to the emerging post-war Asian realities and indicate the direction in which he was looking at the beginning of the anti-colonial era.

Finally, we have reproduced the Quaid-i-Azam's first address to the Constituent Assembly of Pakistan because without it we could not have closed his brilliant parliamentary career. We find in this speech the essentials of the constitution that he visualised for Pakistan, the framework of priorities for the administration of the country, his vision of his people's future as well as his final comment on the struggle that had brought them independent statehood. This was the quintessence of all that Jinnah was and had been—the upholder of the rule of the law and equality between citizens, the champion of a fair and benevolent administration, and the realist who would let history write the final verdict. In a few words he summed up the movement that was Pakistan—the only practical solution of the sub-continent's constitutional problem—and indicated the way Pakistan could progress—by repudiating the idea that any citizen's religion or caste or creed had anything to do with the business of the State.

Lahore
January 14, 1977.

The Editors

I

MUSLIM WAKF LAW

The successful piloting by him of the Mussalman Wakf Validating Bill in the Indian Legislature is a remarkable illustration of Mr. Jinnah's great qualities as a lawyer and a parliamentarian. Also this event is yet another evidence of his devotion to the Muslim cause.

Under the Islamic fiqh, an owner of property has quite wide powers of making a gift of his property or dedicating it for a religious, pious or charitable purpose. There are various qualifications and incidents relating to such a dedication, but those need not be noticed for our present purpose, for which the only material point is that, according to the orthodox Islamic law, a dedication of property for the benefit of the descendants of the owner is also considered a permissible object, as long as the ultimate benefit goes to a charitable purpose. In law this is called "wakf-alal-aulad".

Now, at the beginning of the British rule in India, and for quite a considerable time after that also, the courts applied rules of fiqh to disputes concerning what are called the personal laws of Muslims, including the subject of wakfs. But then, in the year 1873 for the first time, one High Court in India made a departure from this principle. Other decisions followed and conflicting judicial pronouncements were made by the various High Courts and an element of uncertainty came to be introduced as to what would be a valid disposal of property by way of wakf, until in 1894 the Privy Council laid down that in order that a wakf-alal-aulad be valid, there should be a "substantial" dedication to charity and also the reversion to the charitable purpose should not be postponed to "too remote" a point in time. Naturally, if this principle was to be followed it would be for the courts to

decide whether in any particular case, dedication was or was not "substantial" and whether or not the point in time of reversion to charity was too remote.

Muslim public opinion in India reacted strongly against this decision of the Privy Council, because the judgement was considered as a great threat to the sanctity of Muslim institutions in general, and the law of wakf in particular.

Incidentally, it may be pointed out that for a proper appreciation of this reaction it is necessary to give due consideration to the social, economic and political conditions in which the Muslim minority in India found itself placed in the last century and the early part of this century. While in a sovereign Muslim State the Muslim society would consider nothing wrong in reforming and remoulding, through a democratic process, any of its laws, so as to suit them to the changing social requirements, the approach of the people to any change in the Muslim law, sought to be introduced by a foreign non-Muslim ruling authority, whether executive or judicial, was bound to attract a hostile reaction from all those who had the cause of preservation and integrity of Muslim society dear to their hearts.

In this matter, the view of Dr. Iqbal may be briefly mentioned here. While, as is known, Dr. Iqbal was a great advocate of the principle of Ijtihad and evolution of Islamic fiqh, he, at the same time, believed that, in certain unfavourable political or social situations, conservatism also has its advantages and this is the explanation that he offers for how the laws of Islam were kept rigid for quite a considerable time in the history of Muslim society.

In the Sixth of his Lectures, entitled, 'The Principle of Movement in the Structure of Islam', Iqbal observes:

"We are all familiar with the Rationalist movement which appeared in the church of Islam during the early days of the Abbasides, and the bitter controversies which it raised. Take for instance the one important point of controversy between the two camps—the conservative dogma of the eternity of the

Quran. The Rationalists denied it because they thought that this was only another form of the Christian dogma of the eternity of the word; on the other hand, the conservative thinkers whom the later Abbasides, fearing the political implications of Rationalism, gave their full support, thought that by denying the eternity of the Quran the Rationalists were undermining the very foundations of Muslim society. Nazzam, for instance, practically rejected the traditions, and openly declared Abu Huraira to be an untrustworthy reporter. Thus, partly owing to a misunderstanding of the ultimate motives of Rationalism, and partly owing to the unrestrained thought of particular Rationalists, conservative thinkers regarded this movement as a force of disintegration, and considered it a danger to the stability of Islam as a social polity. Their main purpose, therefore, was to preserve the social integrity of Islam and to realize this the only course open to them was to utilize the binding force of Shari'at, and to make the structure of their legal system as rigorous as possible......

"For fear of further disintegration, which is only natural in such a period of political decay, the conservative thinkers of Islam focused all their efforts on the one point of preserving a uniform social life for the people by a jealous exclusion of all innovations in the law of Shari'at as expounded by the early doctors of Islam. Their leading idea was social order, and there is no doubt that they were partly right, because organisation does to a certain extent counteract the forces of decay."

It was in the year 1911 that Mr. Jinnah moved the Mussalman Wakf Validating Bill in the Indian Legislature. The object of this legislation was to remove all the uncertainty and doubts that had been created by the judgement of the Privy Council, which we have earlier mentioned, and to declare and reinstate the accepted principles of Islamic law on the subject of wakfs.

It was by no means an easy matter to win the support of the House for this Bill. The mover had strong odds and serious objections to meet, and it required all the qualities of

forensic reasoning, moderation and persuasiveness for Mr. Jinnah to be able to convince the Members.

While introducing the Bill, Mr. Jinnah first of all informed the House of the strong and unanimous Muslim public opinion against the pronouncement of the Privy Council, which had necessitated the Bill. And then after explaining in some detail, the legal attributes and incidents of the Muslim law of gifts and wakfs, Mr. Jinnah recounted a brief history of the conflicting case law having a bearing on the subject of wakf-alal-aulad, and came to the decision of the Privy Council. He pointed out the dangerous uncertainty that had arisen because of this judgement.

It was pointed out by the mover that the matter was not merely of theory. Practical problems had arisen. Mr. Jinnah gave some instances of these problems.

His next argument was based on the opinions of eminent jurists and scholars of Muslim law. His speech would show that he had made an extensive and laborious study of many authentic text-books and other material dealing with the subject of the Bill and this was not confined to India. He had made some study of the opinions of jurists from Turkey, Arabia and Egypt and of that part of the legal systems in these Muslim countries which dealt with the subject of the Bill.

All these authoritative views were used by Mr. Jinnah in support of his stand that the decision of their Lordships of the Privy Council was not a correct interpretation of the Muslim law on the subject of wakf-alal-aulad.

In respect of the economic aspects of the institution of wakf-alal-aulad, the views of a Russian scholar were also relied on.

After an elaborate speech on introduction, Mr. Jinnah went on to explain the provisions of his Bill, clause by clause. It is not necessary for our purpose to say anything on the part of the proceedings of the Council, because eventually,

with one exception the Bill was passed in the form in which it was introduced.

However, that one exception is important and may be noticed.

One serious objection taken to the proposed legislation was that the institution of wakf-alal-aulad may be used as a means to defeat the claims of certain creditors and to defraud them. Mr. Jinnah recognised that this was a weighty objection and, therefore, to meet it, provisions were included in the Bill which were intended to make it compulsory that a dedication by way of a wakf-alal-aulad should be in writing, which is attested by at least two witnesses, and the deed should also be registered.

But then during the deliberations in the Select Committee it came to be realised by the Muslim members, under the guidance of Mr. Jinnah, that the provisions relating to writing and registration would have to be omitted if the general object of preserving Muslim institutions was to be effectively achieved. The Muslim law permitted an oral dedication and creation of a wakf-alal-aulad and it was considered that if a departure on this aspect of the law was conceded, it may open the door to more, and unacceptable, innovations in the laws of Islam.

Mr. Jinnah was able to convince all sections of the House, including the Hindu and European members, of the justification of the decision of the Select Committee by which the provisions relating to writing and registration were proposed to be omitted from the Bill.

Now we would reproduce the three speeches of Mr. Jinnah on this Bill, one, made at the stage of its introduction, second, when he presented the report of the Select Committee and the third at the conclusion of the debate.

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I

Sir, I beg to move for leave to introduce a Bill to define the rights of the Mussalman subjects of His Majesty to make settlements of property by way of wakf in favour of their families and descendants. Before I proceed with the merits of this Bill, I have to express my grateful thanks, not only on my behalf, but on behalf of the Mussalman community to His Excellency the Viceroy for having accorded the sanction which was thought by the advisers of Government necessary under Section 19 of the Councils' Act of 1861. Before I deal with the merits of this Bill, I want one point to be made clear, and that is this. Ever since the well-known case of Fata Mohomed Ishak V. Russomaya (reported in L.R. 22 Indian Appeals, page 76), there has been a very strong feeling and agitation amongst the Mussalmans against the decision. That feeling has been expressed in various ways, by sending memorials to Government, by passing resolutions in different associations and conferences and gatherings, and it has been going on for more than 15 years now all over the country. That being the state of feeling of the Mussalman community on the subject last year I put certain questions to government and replies were given to me by the Government of India.

These questions I shall trouble the Council with because they show that the government at that time recognised that very strong objections were entertained against the decision of the Privy Council.

The questions that I put and the answers were as follows:-

> 'Are the Government aware that there is a strong feeling prevailing amongst the Muhammadans against the present state of wakf law as expounded by the recent decision in the Privy Council?

> 'Does the Government propose to take steps to bring the law on the subject into conformity with the text and the wishes of the Mussalmans? If so, how soon?'

The answer was:-

> 'The Government are aware that objections are entertained to the exposition of the law on the subject of wakf contained in various decisions of the Judicial Committee of the Privy Council. As at present advised, the Government are not prepared to undertake legislation with the express object of upsetting judicial decisions to which exception is taken. They are, however, ready at any time to accord their fullest consideration to any specific proposals for legislation directed with the object of securing family settlements of a limited nature, provided that such proposals are generally approved by the Muhammadan Community.'

After this answer was given by the Government, I had the opportunity of consulting leading Mussalmans in this country, and it was after a great deal of consideration, I decided that the only way in which this question, which is of paramount importance to the Mussalman community, can be solved was to bring a Bill in this Council. I mentioned that there has been agitation going on for many years. Recently the Muslim League, which represents a great volume of Mussalman opinion in this country, at its last session passed a resolution to the effect that government should undertake this legislation. A Society known as 'Nadva-tul-Ulema' which is composed of learned Maulvis and men learned in the law, I believe, has sent in a memorial to Government. I do not know whether it has actually been received by Government, but I know this, that memorial was sent round for signatures, and thousands of signatures have been obtained all over the country from the Mussalmans, and I believe it has been sent to Government. If it has not, it is on its way to Government. A copy of that memorial was sent to me by that great and learned Maulvi,

who is known as Maulvi Shibli, and who exercises a great influence over the Mussalman community, and whose opinion is of the greatest volume to the country, so far as the Mussalman community is concerned. In that memorial, he quotes authorities on the subject and points out what the feeling of the community is and I will just read a passage from it:

> 'During the last few years, the feeling among Muhammadans upon the subject has been growing strong and it has found expression in various ways. At the meeting of the Muslim League and other Muhammadan conferences, Sunni and Shi'a, associations of a social and religious character, resolutions have been passed inviting the Government of India to undertake legislation upon the subject. Khan Bahadur Maulvi Muhammad Yusuf, a leading Vakil of the Calcutta High Court, a great Muhammadan lawyer, submitted an elaborate pamphlet to the Government of India some time ago. The Right Hon'ble Mr. Sayed Amir Ali has written strongly and clearly upon the subject, and Syed Hussain Bilgrami, who was recently a member of the India Council of the Secretary of State, also approached Lord Morley on the subject.'

Therefore, you will see that the feeling in the country on this point is very, very strong. The question now before the Council is, what is this question that has been agitating the Mussalman community? As I said, it is the decision of the Privy Council in 1894 that has, to our mind, paralysed the Mussalman law, so far as the power of a Mussalman is concerned, to make trusts for his family, his children and his descendants. The legal history of this question goes as far back as half a century and more. The first decision that I am aware of, was pronounced in 1838, and several other decisions followed that decision, but not directly touching this question until 1873, when the decision of the Bombay High Court was given on this point; which ruling definitely marked the era of adverse current of decisions. Since then,

several pronouncements have been made all over the country by different High Courts more or less conflicting until 1894, when the decision of the Privy Council, the highest tribunal in the Empire, gave the severest blow to the law of wakf-alal-aulad. The subject I may tell you is this. There are two things known to Mussalman law—one is hibba and the other is wakf—two institutions. Hibba in other words means out-and-out gift. The Muhammadan law permits a Mussalman to make a gift of his property out-and-out. That is to say, he gives delivery of his possession and is done with it—what an English lawyer would call conveyance out-and-out. He cannot under the law of gift create different estates, such as life estates, remainder, vested remainder and continued remainder. He cannot, therefore, make any provision of any future character for his family or his children; he has got to give away the property straight off. Then comes the other branch of the Mussalman law which is known as wakf. Wakf, as I understand, is analogous—somewhat analogous—to the law of trusts in the English law, and that again is divided into two parts. It may be private trusts with ultimate reversion to charity, or it may be charitable trusts pure and simple, or in other words, private trusts with ultimate reversion to charity or pure and simple charitable or religious trusts. Now, the question that we are concerned with in this Bill is the question of private trusts with ultimate reversion to charity, because even today, according to the Mussalman law as well as the laws of all other countries, well-known to all the jurisprudents of different countries, you may dedicate property to charity in perpetuity and the rules that offend against the law of perpetuity do not apply. However, we are only concerned with the trust which I would call private trust with ultimate reversion to charity. Here I may remind the Council that the testamentary power of a Mussalman is limited. He can only dispose of one-third of his property by will. That again is subject to the same rules as hibba or gift, that is to say, he cannot create life estates or various other estates known to the English or any other law of trust, and what is more, the testamentary disposition cannot be made in favour of heirs, or any particular heir

unless all the heirs consent to it after the death of the testator. Now, as I said, in the Bombay High Court the decision was laid down against the Mussalman law in 1873. After that, in 1882 and in 1884, other decisions came and in a way overruled the previous decisions, and this sort of conflicting decisions were given and various pronouncements were made in different High Courts in India until in 1894, we came to meet the decision of the Privy Council which lays down in substance as follows:

> It says that wakf of this kind, namely, the wakf-alal-aulad, is governed by Muhammadan law. No doubt, therefore, we cannot go beyond the pale of that law, but they say that there must be substantial dedication to charity. What is substantial dedication to charity? This is not defined in any way at all. They further go on and say that that substantial dedication to charity must be at some period of time or other presumably not remote. They do not fix any limit upon the time or period. Therefore, it has introduced the greatest uncertainty in our law. A Mussalman who wants to make a wakf of this character—wakf-alal-aulad—does not know at what period of time the charity should come in under the deed. He does not know what would be considered substantial dedication to charity by any Court of Law. One Court may hold that the charity should come in after the first, another Court may hold that the charity should come in after two lives, and so on and so forth.

Again, what is substantial dedication to charity? One Court may hold that one-sixth is enough, another Court may hold that there should be at least half, and so on. Therefore, these two propositions laid down by the Privy Council have introduced the greatest uncertainty in our law. But the main point, the principal point, we are concerned with, is the proposition of the Privy Council that, unless there is substantial dedication to charity, the wakf is illusory and therefore, bad. We say, with the greatest deference and utmost respect for the Lords of the Privy Council that that

decision is not in accordance with the true principles of Mussalman law, and their exposition of our law is opposed to the fundamental principles of Islamic jurisprudence. If a man cannot make a wakf-alal-aulad as it is laid down in our law, then it comes to this that he cannot make any provision for his family and children at all, and the consequences are that it has been breaking up Mussalman families. Of course, the result of this decision has been, first of all, that wakfs have been hunted down. Ancient wakfs that have been in existence and operation for years have been hunted down in all parts of India and have been declared invalid. That is one effect of the decision. The other effect of the decision is that it prevents you from making any settlement in favour of your family and children. Therefore, Sir, that being the state of our law at the present moment, the Mussalman community feels that the only way in which it can possibly put this state of things right is by an appeal to legislation. I do not wish to cite the authorities here or the law here. I do not wish to take up the time of the Council unnecessarily, but I hope that I have made my points quite clear.

The opinions of the greatest lawyers, such as the Right Hon'ble Mr. Amir Ali who is well-known, are fully set out in his book, which is the text-book on Muhammadan law; the opinion of Sir Rowland Wilson, who is another eminent Muhammadan lawyer and the author of a very well-known book on Muhammadan law, is also to the same effect. I only propose to quote a passage from his book which collects all the translations of all the text-books on this subject, and, after giving all those translations, the conclusion he comes to is this:

> (See Wilson's Muhammadan Law, 3rd Edition, Page 478).
>
> 'Mr. Justice Amir Ali, both in his book and in two memorable judgements, has accumulated a mass of testimony to the same effect from other untranslated Arabic books. But the above extracts from a standard work accessible to all students in its English dress

are surely as conclusive (in the absence of contrary evidence) as any affirmative testimony can be, as to the practice of Indian Murammadans of the Hanafi persuasion at the date of that compilation (17th century) and also of the practice in Central Asia at the date of the principal text-books relied on by the compilers (12th and 13th centuries). It may be added that the Turkish practice, as described by D'Ohsson a century ago, was substantially the same, and that the Shi'a and Shafeite authorities are quite at one with the Hanafites as to the validity of settlements on descendants, as has been shown under Sections 460 and 484A.'

Therefore, he comes to the conclusion that the decision of the Privy Council is not in accordance with Mussalman law.

Then, there is one more passage I will trouble the Council with which comes also from a very great authority, Sir W. C. Petheram, once the Chief Justice of Bengal. After the decision of the Privy Council, he happened to take an opportunity of writing an article in the Law Quarterly Review of 1897 in which he devotes a great deal of his attention to the original authorities and comes to a conclusion to which I will draw the attention of the Council. It is an article headed 'The Muhammadan Law of Wakf'. He goes into the history of the various judicial pronouncements, and he sums up thus:

'The judgement of the Judicial Committee as delivered by Lord Hobhouse contains a passage for which I am sure the inhabitants of India, Hindus as well as Mussalmans, will be grateful. It is as follows:

'Amongst the very elaborate arguments and judgements reported in Bikani Meah's case some doubts are expressed whether cases of this kind are governed by the Muhammadan law, and it is suggested that the decision of Ahsanullah Chowdhri's case displaces Muhammadan law in favour of English law. Clearly

the Muhammadan law ought to govern a purely Muhammadan disposition of property.'

After the judgement of the full bench had appeared, the subject was a good deal discussed by Muhammadans in India, and I was struck by the fact that every Muhammadan who spoke to me on the subject agreed with Mr. Justice Amir Ali, and they all, both lawyers and laymen, asserted that there was no doubt that a wakf as understood by Muhammadans was such as he had described it in his judgement. At about the same time, I had a conversation on the subject with a gentleman who then occupied a very important position in the Government of India but who had spent many years in official position in Muhammadan countries. He assured me that the law as laid down in the majority of the Full Bench was not in accordance with Muhammadan law and that it was within his own knowledge that a very large portion of land, both in Turkey and Egypt, was held under family settlements created by way of wakf constituted and conditioned in the way which Mr. Amir Ali asserts is lawful according to Muhammadan law. As the matter appeared to be of considerable importance, I have thought it worthwhile to endeavour to ascertain how the law on the subject is understood and administered at the present time by Muhammadan Judges in Muhammadan countries and have quite easily obtained two French translations of books which appear to deal with the whole subject and to indicate how the institution is regarded in Turkey, Arabia and Egypt.

Here I may pause for a moment and point out that at one time it was thought that the Mussalman law did not apply to wakf-alal-aulad and that the English rule of law offending against perpetuity should be made applicable to it. That view hinted at by the previous decisions was absolutely displaced by Lord Hobbouse in that well-known case, 22 Indian Appeals, Page 76, in that clearest term:

'Clearly the Muhammadan law ought to govern Muhammadan dispositions of property.'

Therefore, you will see, Sir, that at the present moment while the position of the Mussalmans under the Privy Council decision is, so to say, an impasse, in other countries such as Turkey, Arabia, Egypt, and I believe, although I am not quite sure, but I believe that even in native states in India, such as Nizam's dominions and others, the true Mussalman law is administered in matters of this kind. Then, if that is so, and so far if we are right that the exposition of the Privy Council of our law is not correct, the question which then arises, Sir, is this; are we to be left in this position which I have described? Is the Muhammadan to be deprived of his power, of his right which is given to every one under any system of jurisprudence, to make an adequate provision for his family and children? You have, on the one hand, by this decision, taken away that power. On the other hand, there is no corresponding power under the Mussalman law which enables him to get over it. Therefore, if I may put it in this way, you have cut off an important limb of the body of jurisprudence of Islamic law and it has not been replaced by anything at all. Therefore, Sir, as I said, the question is, are the Mussalmans to be left in this position? If yes, we all know that the institution of wakf is entirely interwoven with the religious life, the social life and the basic principles of economy of the community, and the result is a revolution in the law of property under Muhammadan law. Here again I will quote from the memorial referred to above. In that memorial it is said:

> 'It has long been felt by the Muhammadan community that the result of certain decisions of the Judicial Committee of the Privy Council in cases of Muhammadan family settlements which have gone up before them on appeal from Indian Courts has been the breaking up of an institution which rests upon the highest religious and social sanctions and which in the past has saved a large number of Muhammadan families from destitution while it has at the same time enabled pious Muhammadans to practise what they look upon as an act of great religious merit.'

On this point, I may here draw the attention of the Council to the words of a great Russian professor who approves of this system, which may appear to an English lawyer, trained up in principles of English law, as bad for various reasons looked at from the point of view of English jurisprudence. But we have to take each system of jurisprudence by itself. The Russian professor, who has studied this question, it seems with very great care, is of this opinion:

> 'It is a most rational and happy solution of economic problems which must have troubled parents solicitous about the future of their descendants.'

Therefore, on economic principles, he seems to think that it is the best solution that you can possibly have. Well, Sir, that being the position, we feel that the only way open to us is to appeal to our Government, and here today I appeal to our Government, and I ask you, Sir, that the Government of India should give every support to this Bill. This Bill is not intended in any way to lay down a new law or a new principle. This Bill is intended only to reproduce the Mussalman law which has been disturbed by the decisions of the Privy Council. It is not intended to define the general law of wakf which must be governed by the Muhammadan law.

Now, coming to the provisions of the Bill, you will see that the first portion of the Bill, Clauses 1 and 2, are nothing but preamble and definitions, etc. Section 3, which is the most important part of the Bill, says this:

> Power to create wakfs:
>
> '3. Subject to the provisions of this Act, it shall be lawful for any person, professing the Mussalman faith, not being a minor or of unsound mind, to create a wakf for among others the following purposes:-
>
> (a) for the maintenance and support, wholly or partially, of his family, his children and descendants, and
>
> (b) where the wakif is a Hanafi Mussalman, for his own support and maintenance during his lifetime or

for the payment of his debts out of the rents and profits of the property dedicated:
'Provided always that the ultimate reversion is, in such cases, expressly or impliedly reserved for the poor, or for some other religious, pious or charitable purpose of a permanent character.'

Now, that we submit is nothing but reproduction of Mussalman law.

Then Section 4 is a section by which is intended that there should be a writing, and that writing should be signed and attested by two or more witnesses and registered. That section, which is only a matter of details and not a matter of principle, is simply to secure the authenticity of a document, and the following sections along with Section 4, viz., Section 5 and 6,—all these provisions of registration are intended to prevent fraud on creditors, because that was one of the points which was emphasised not only by the decisions in the High Courts in India, but by the Privy Council also, that the present state of things opened up a wide door to and facilitated frauds upon the creditors.

It would depreciate the title of property generally and therefore, it is just as much in the interest of the owner as the alienee that all safeguards should be provided for, to maintain clear, good and appreciable title to immovable property.

In this complaint, there is great force, having regard to the altered circumstances due to progress and advance of civilization. For example, a man makes a wakf in favour of his children and their children, and so on, and ultimate reversion is given to charity. Well, the wakf may not be registered, it may be a will, it may be a testamentary document. The document may remain in the drawers of the descendants and they may think it necessary to alienate this property by way of mortgage. Well, so far as they are concerned, perhaps it is in their own interest to keep the document in one of the secret drawers. The next genera-

tion may come up and object to it and say the previous generation only had a life interest, they were only entitled to income, and the mortgage was bad. The creditor who happened to advance money then would be in a great fix, and it is in order to prevent that sort of fraud upon creditors that I have thought it necessary that the document should be registered. Then the whole world would know, because registration is notice, and if any person takes that title, he takes it at his own risk. Clause 10, which only deals with testamentary wakfs, does not in any way alter the Mussalman law. It only says that if you choose to make a wakf by a testamentary document or will it should be registered, that is again to prevent fraud upon the creditors. Clause 11 is intended to give power to persons mentioned therein to get the will registered within a certain period.

Therefore, Sir, the Council will see that this Bill does not in any way intend to codify or define the law of property or wakf generally which must be governed by the Muhammadan law. It does not in any way go against the Mussalman law, but on the contrary, the main object, the sole purpose of the Bill is to reproduce the Mussalman law in conformity with the texts, in accordance with the wishes and the very strong feeling of the Mussalman community, which feeling is well justified, having regard to the enormous consequences that have followed upon the decision of the Privy Council. Therefore, I ask the Council to give me leave to introduce this Bill. This Bill will be before the country and we shall then be in a position to see if any objection is entertained against it, and I daresay there may be several suggestions that may be made with regard to the details of the Bill. All those, no doubt, will be fully considered at other stages when we reach those stages. Therefore, I ask the Council, and I ask the Government, to support this Bill, and to allow me to introduce this Bill.

II

Sir, I move that the report of the Select Committee on the Bill to declare the rights of Mussalmans to make settlements of property by way of wakf in favour of their families, children and descendants, be taken into consideration.

In moving this, Sir, I have only got to deal with a very few points, and all that I have to say is with regard to the objections that have been raised by the different provinces, particularly the High Court Judges, the District Judges and non-Mussalman opinion. The one objection which has been urged against the Bill is the question of public policy. The answer to that, Sir, is a very simple one, and, as I have already explained in my speech when I introduced the Bill, what we have got to do is to administer the Muhammadan Law to the Mussalmans, and therefore, to introduce the question of public policy which is foreign to the Islamic Jurisprudence, to my mind is outside the question, and there is no such thing as public policy of any kind, so far as Muhammadan Jurisprudence is concerned, to which the provisions of this Bill are in any way opposed. I, therefore, give that simple answer to that point.

Another point was that we must protect the creditors, and with regard to that, as the Council knows, the Bill, as it was originally introduced, contained certain clauses, which were intended to prevent fraud against creditors. Those clauses, when they came to be considered in the Select Committee, we, on careful consideration, found it very difficult to maintain, without in any way infringing upon the personal law that governs the Mussalmans in this country. That being so, it was, after very careful consideration, decided by the Select Committee unanimously that the registration clauses should be dropped. But so far as this point is concerned and this is the second point and the only point really with which we are concerned—and the

criticisms are concerned, seems to me, Sir, that the Muhammadan Law, as it stands today provides certain safeguards against fraud upon creditors. The fraud upon creditors may be divided into two parts: first, a fraud which may be practised when the wakf is created; so far as that part of the law is concerned, there are safeguards, as I said already, in the Muhammadan Law. Then with regard to the frauds which may be practised upon the creditors after the wakf has been actually created, it seems to me that we have got already the Registration Act, which lays down that every wakf that is made in writing must be registered, and that notice by virtue of its being registered is a sufficient safeguard to that extent. No doubt a Muhammadan may make an oral wakf, and in that case it may prejudice the creditor to a certain extent. The answer to that is, that, that is Mussalman Law and you cannot override the Mussalman Law, and therefore, I, for one, am not prepared to accept any provision which is in any way likely to overrule or affect the personal law of the Mussalmans. A man stands in a very serious position indeed, if he makes, an oral wakf, when he comes to prove it in a Court of Law, and therefore, now-a-days, people do not make oral wakfs. Thus the very apprehended fear is so very small; whereas, in order to rectify the fear, the danger of infringing upon the Mussalman law is so great; and taking the two into consideration, the one overbalances the other to such an extent that I felt that I could not possibly have that provision.

One word more, Sir, and I have done; and that is this, that my Hindu friends must remember that although one of these provisions, viz., the last provision which I have mentioned, the regulating of oral wakfs, is the only danger so far as I can see. With regard to that, my Hindu friends must also understand this, that it affects the Mussalmans to a much greater extent, it prejudices them to a much greater extent than it would the creditors who may happen to be Hindus; for this reason, that it will depreciate the Mussalman's title to the property to a great extent. Therefore, remember, Sir, that in not being able to accept this provi-

sion or this suggestion, viz., to prevent the Mussalmans from making oral wakfs, the fear being very small; I am not only guided by this fact, that my Hindu friends will suffer, but the Mussalmans will equally suffer; if not more; therefore, we would certainly like if we could possibly do it, to have this provision in our own interest because otherwise, it certainly depreciates the immovable property so far as the Mussalmans in the country are concerned. Therefore, my Hindu friends will, I know, sympathise with me that I am tied down by my law to such an extent that, although to a certain extent, I am unable to alter it. And the position of the Government is still more difficult because by their charter they have undertaken and pledged themselves to administer the Mussalman Law to the Mussalmans and the Hindu Law to the Hindus and, therefore, these being the difficulties in our way, we had eventually to abandon the registration clauses. With these remarks, I hope and am confident the Council will pass this Bill unanimously. I will only say one word more, Sir, and that is this: I wish on my own behalf and of the Muhammadans of India to express our sincere gratitude to His Excellency the Viceroy and his Government for the manner in which they have received and treated the Bill in this Council.

It had made us feel that the Government in this matter has acted as if it was our Government in every sense of the word. Their spirit, their feeling, their help have enabled me to pilot this Bill through the Council. I trust the Government will always make us feel that it is our Government and if we have got a reasonable complaint, a reasonable grievance to put before you fairly and properly, you will meet us fairly and properly, and I trust that in other matters that may come hereafter before this Council or outside this Council, the Government will extend the same spirit and the same attitude towards us.

III

Sir, first of all, I must thank Hon'ble Members who have spoken of me in very kind terms, and I also thank the Government and the Hon'ble Law Member who has expressed his kind feelings towards such work as I may have done in this matter: but I especially and particularly welcome the congratulation from my old and revered friend, the Hon'ble Babu Surendranath Bannerjee, who represents a volume of opinion in Bengal, and, coming from him as a Hindu, I particularly appreciate it and I wish to thank him very much for it. With regard to his support, I feel most grateful to him.

With regard to the Hon'ble Mr. Vijiaraghavachariar, I must say that the Hon'ble Member today happens to be in a mood of opposition. While opposing the provisions of the Bill, the Hon'ble Member was good enough to wind up by supporting it. While finding fault with the provisions of the Bill and saying that Mussalmans are getting a law which is going to give them a system of primogeniture, he supported it. I now appeal to the Hon'ble Member; his suggestion was that we want to do these things under the guise of the fiction of Mussalman law, we do not want to face the Privy Council, although we have got there the Right Hon'ble Mr. Amir Ali, we are afraid to face the Privy Council because of the English Judges. Really I appeal to the Hon'ble Member and his experience. He knows perfectly well that never in the history of the Privy Council has that tribunal ever revised its judgement. And, Sir, is it right for a lawyer of his experience to tell me why is it that I do not go to that tribunal which has already decided this point and ask for a revision?

Then the Hon'ble Member criticised very firmly and said that this Bill was not the Mussalman law, that the Privy Council's decision was the Mussalman law. Well, with very great respect for him, he is entitled to his opinion. Every man is entitled to his opinion. With very great defe-

rence, I may point out to him that the highest authorities, Mussalman and English Jurists of eminence, have declared with the utmost deference for that great tribunal, the Privy Council, that their decision is not in accordance with Mussalman law. The whole of my community, with a few exceptions—for whom also I have respect, because each man is entitled to his own opinion—are of the opinion that the Privy Council's decision is not correct exposition of the Mussalman law. Therefore, Sir, our only remedy was to appeal to the Government, appeal to the legislature, and the Government have come to our rescue. That ought not to excite any jealousy, that ought not to excite any envy of any kind whatever, that ought not to entitle any one to say that by these circuitous methods we get a system of law, namely primogeniture, and not Mussalman law.

However, I do not wish, Sir, to go into these details because the Hon'ble Member has given me his support. I appreciate the support he has given, no matter the manner in which he has given it. Then he says with regard to clause 3, how does that clause come in at all? I have explained to the Hon'ble Member myself, and if he looks up any text-book on Muhammadan law, he will find that what is reproduced in clause 3 is nothing but Muhammadan law, namely, that one of the purposes recognised by Mussalman law, as purposes for which you can make a wakf as if a man happens to be Hanafia for his own support, maintenance or payment of debts—that is a purpose for which he can make a wakf, and the Privy Council's decision was that if you postpone the dedication to charity for a certain period—and if the dedication to charity is proposed to be given at any period too remote—then that wakf is invalid. Therefore, if a Hanafia Mussalman makes a wakf for payment of his debts, and if this clause is not inserted, the Privy Council's decision will stand and you have only got to take it to any Court of Law to set aside the wakf. Therefore, it is absolutely essential that this purpose which was, so to say, overridden by the decision of the Privy Council, must be specifically mentioned in the clause to show that it is a purpose

for which you can make a wakf. Then the last point was the point about creditors. Well, I have already told the Council as to what the position is. The Hon'ble Mr. Sitanath Roy Rai Bahadur had amendments about this on the Agenda List which he was good enough to withdraw. Now I can only assure the Hon'ble Member that so far as the first amendment is concerned, I have not the slightest doubt in my own mind, and I appeal to any lawyer, that secured creditors cannot be affected by the making of a wakf after the security is given. The only question, as I pointed out, is the question of unsecured creditors, and if a man while he is making his wakf is in an insolvent condition, and he makes his wakf in order to defraud, defeat or delay his creditors, then I say without any hesitation that, that wakf will be set aside by any Court of Law under Muhammadan law. If you can prove that the wakf is created in order to defraud the creditors, or delay the creditors, you have only got to prove that and the wakf will be set aside. There is the Provincial Insolvency Act and there is the Presidency Towns Insolvency Act. If a man in any way goes against those provisions, the Court of Bankruptcy will set aside his wakf. But the difficulty that does arise—and I do recognise that there is difficulty—and that is in the case of a testamentary wakf or an oral wakf, that is to say, the wakf may have been made when the man was in a perfectly solvent state and not intended to defeat, defraud or delay his creditors, but an oral wakf perfectly good at the time it was made. His heirs may suppress the fact of any wakf having been made and dispose of the property as they like. A second or third generation may come up and attempt to prove that an oral wakf had been made. I say if a man comes to a Court of Law after one or two generations and attempts to prove an oral wakf, I appeal to you—not as lawyers but as men of common sense—what Court of Law would accept such proof, and the consequence will be that he will never succeed in proving the wakf. But that small danger is there, and the danger affects Mussalmans a great deal more than any other community.

It affects Europeans, but Europeans as a rule do not purchase or deal with immovable property. That danger is there, and very small danger though it be; it affects us much more seriously than other communities, because, as the Hon'ble Member admitted very frankly, it depreciates the title to Mussalman property. Our difficulty is how are we to override the provision of Muhammadan law, which empowers a Mussalman to make an oral wakf. We are unable to do it, and therefore, what little apprehension there may be among the other communities I ask them to that extent to bear with us who are suffering along with the others to a much greater extent. One word more and I have done. Before I sit down I wish to offer my personal thanks to the Hon'ble the Law Member for the most able and valuable help he gave me in the Select Committee to get this Bill through, and in that I include our able Secretary, Sir William Vincent, who gave us equally valuable help in the matter before the Select Committee, after the Select Committee and during the Select Committee.

It affects Europeans, but Europeans as a rule do not purchase or deal with immoveable property. That danger is there and very small danger though it be, it affects us much more seriously than other communities, because, as the Hon'ble Member admitted very frankly, it denationalises the Mussalman property. Our difficulty is how are we to override the provision of Mahommedan law, which empowers a Mahomedan to make an oral wakf. We are unable to do it, and therefore, what little apprehension there may be among the other communities I ask them to that extent to bear with us who are suffering along with the others to a much greater extent. One word more and I have done. Before I sit down I wish to offer my personal thanks to the Hon'ble the Law Member for the most able and valuable help he gave me in the Select Committee to get this Bill through, and in that I include our able Secretary, Sir William Vincent, who gave us equally valuable help in the matter before the Select Committee, after the Select Committee and during the Select Committee.

II

THE ROWLATT BILL

'No man's liberty should be taken away for a single minute without a proper judicial inquiry'—Jinnah.

One of the most glorious chapters in the Quaid-i-Azam's long career as a Member of the Indian Legislature was his spirited opposition to the measures devised by the British Government in 1918-19 to crush militant political movements and severely curtail the civil liberties.

The First World War had had a tremendous impact on the political situation in India. A number of factors—the discovery of the Asian identity, the British campaigns against Turkey, the October Revolution in Russia—gave a great impetus to the freedom movement and the common people displayed a readiness to fight and sacrifice for the sake of freedom that surprised and unnerved not only the foreign rulers but also most of the middle class politicians of India. The Government of India adopted a series of draconian measures to deal with this situation but these only added fuel to the fire of anti-British agitation. In the Central Assembly Mr. Jinnah was one of the severest critics of the offensive Bills and when they were passed and assented to, he resigned in protest.

The first of Mr. Jinnah's several brilliant speeches on the subject was delivered on a Resolution moved by Mr. Khaparde on 23rd September, 1918, which was as follows:

> "This Council recommends to the Governor-General in Council that the consideration and disposal of the Report of the Sedition Committee of 1918 be kept in abeyance, and that a thorough and searching inquiry

be undertaken by a mixed Committee of an equal number of officials and non-official Indians into the working of the Criminal Investigation Department, including the Central Intelligence Department."

In the course of his long speech, the Mover, Mr. G.S. Khaparde, pointed out that the Sedition Committee's Report violated the principles of a fair trial. In reply, the Home Member, Sir William Vincent, explained the reason for appointing the Sedition Committee. He said: "At the time of that appointment, the Government of India were faced with this position. We were aware of the existence of a widespread conspiracy extending over India and beyond the borders which was aimed at the overthrow of the British Government. I do not refer merely to open manifestations of which we had instances at Singapore, in the Punjab, and elsewhere, or to the prevalence of revolutionary outrages in Bengal, but I refer also to persistent underground working with ramifications throughout India by which constant attempts were made to seduce loyal subjects of His Majesty from their allegiance... ......We were aware also, I should have added, that at the conclusion of the war we should be faced with very great difficulties in dealing with this class of crime. For the present we have certain machinery to deal with this class of crime under the emergency measures passed for the war, but this legislation is of a temporary character. In these circumstances, the Government decided, at the instance, I ought to say, of the Bengal Government, to appoint a thoroughly impartial Committee to inquire into the extent of these conspiracies and into the necessity for any special measures, outside the ordinary law, to cope with them." He also claimed that the Committee consisted of eminent experts. The President was Mr. Justice Rowlatt, "a Judge of the High Court of Judicature in England and a lawyer of the highest repute, in no way connected with the Indian Government...Among the members was Sir Basil Scott, Chief Justice for many years of the Bombay High Court...We included in the Committee also Mr. Justice Coomaraswamy of the Madras High Court...Mr. Provash Chandra Mitter, a practising Vakil of the Calcutta

High Court...The last member was Sir Verney Lovett, a Member of this Council..."

The Home Member was followed by Sir Verney Lovett, who had been a member of the Rowlatt Committee. He justified both the findings of the Committee and the procedure adopted by it. Mr. Srinivas Sastri was critical of the working of the C.I.D. in one particular respect. This he described as dogging the footsteps of, and shadowing, those persons whom they suspected. He, however, was not in favour of the first part of the Resolution, and also did not justify the treatment of the two parts together. Mr. Surendra Nath Bannerjee considered the first part of the Resolution to be inopportune and also associated himself with the observations made by Mr. Sastri regarding the working of the C.I.D. He pointed out a link between the Reform proposals and the Report of the Rowlatt Committee. He said: "......My Lord, those who have followed the debates of the House of Lords must be aware of the fact that one of the things that Lord Sydenham and those who support him urged was the publication of the Report of the Rowlatt Committee and of the papers connected with the Secretary of State's delegation to this country. In the mind of Lord Sydenham and others of his way of thinking, the Reform proposals and this Report are linked together. The Reform proposals are to Lord Sydenham and his party gall and wormwood, they are poison, and this Report they regard as the anti-dote......."

Dr. Tej Bahadur Sapru also did not support the first part of the Resolution and as regards the second he shared the sentiments of Mr. Sastri. Sir Michael O'Dwyer was all praise for the C.I.D. whose activities were "inevitable in the Punjab for repressing the various disorders that had threatened the public security in the province for five years". Mian Mohammad Shafi did not wish to repeat what had been said by Mr. Sastri and others regarding the first part of the Resolution except that he entirely agreed with, and heartily endorsed, what they had said. Regarding the second part of the Resolu-

tion, he wanted the Council to reject it without any further ado.

Mr. Jinnah spoke after Mian Shafi.

My Lord, the Resolution as it is worded embarrasses one's position very much. I take it that the most important question today, is the question of the Rowlatt Committee Report. Now, the Resolution seeks this, that the Report, or the consideration and disposal of it, be kept in abeyance. I really cannot understand with the utmost possible respect for the Mover, what his object is in asking this Council to vote that the Report should be kept in abeyance. The second part of the Resolution is, that a Committee should be appointed consisting of official and non-official members, to inquire into the working of the Criminal Investigation Department, including the Central Intelligence Department. My Lord, I fail to see what connection there is between our dealing with the Report of the Rowlatt Committee and the working of the Criminal Investigation Department or the Central Intelligence Department. Possibly, there may be some connection so far as certain information or evidence might have been placed before the Rowlatt Committee by it. But the important question, as I understand it, is about the Rowlatt Committee Report. Now, the Rowlatt Committee, as you will find from the terms of reference to that Committee, were appointed to investigate and report (1) on the nature and extent of criminal conspiracies connected with the revolutionary movements in India: (2) to examine and consider the difficulties that have arisen in dealing with such conspiracies and to advise as to such legislation as would enable Government to deal effectively with them. I take it, my Lord, that the sole purpose of appointing the Rowlatt Committee was not to discover that there were criminal conspiracies in the land; they are there and they have existed. But I take it that the real object of appointing that Committee was to determine how to deal with this kind of offences when we return to normal times; for the extraordinary remedies and powers which are now placed in the hands of Government by what may be termed

war legislation will only last during the period of the war and no more, and their main purpose was to suggest what measures, legislative, should be adopted with a view to deal with these conspiracies. The Government had the evidence before them, they had all the papers before them, and they knew perfectly well that this kind of offences were being committed every day. The object was to find out what methods and measures could be adopted to deal with those offences. Now, therefore, I do not attach much importance to that part of the Rowlatt Committee Report, which does no more than put in readable form the narratives of various conspiracies that have existed, the various crimes that have been committed. But we are concerned more with the part which recommends the measures that we should adopt. Now, my Lord, it was said by the Hon'ble the Home Member that these are not political matters, but crimes. With the utmost respect, I beg to differ from him. These are political matters and very much so. You must remember that, in India before 1906, there was no such thing as criminal conspiracies of revolutionary character. I believe that the first bomb that was thrown in India was after 1906, not before that. Therefore, my Lord, the question that we have to consider is this, what has happened to India, why was there all of a sudden in 1906 this signal of a bomb-throw given, and why is it that since 1906 up to 1918 you have these vast developments of this anarchical movement? What is the cause of it?

It is no use for those who represent the Punjab to come forward and make a defence of their policy; it is no use coming and saying that these dangers existed and that they have dealt with these dangers in a most magnificent manner. But I would urge upon this Council and the Government to find out what is the cause of it.

Surely it cannot be that all of a sudden these men became regular criminals. The cause is this, my Lord, that there is discontent; there is dissatisfaction; there is unrest. Might I say, my Lord, that it is partly, if not wholly,

due to your policy. What has been your policy? You might consider it a little.

The Hon'ble Sir Verney Lovett says that you recognise that unless the people of this country will co-operate with the Government, unless they will help, there will be no other method so effective—I hope I am correctly reproducing the effect of his speech—but just as you ask us, the people of India, to co-operate with you, we ask you to consult us—and mind you—and I believe I am speaking on behalf of a very large body—that nobody is more anxious than we are to prevent these crimes. But you cannot ask us to help you to prevent crimes when you lay down the policy without consulting us. If you want us to co-operate with you, then associate us with you and give us a certain amount of control, responsibility in the policies which you are laying down for the government of this country. My Lord, that is an aspect which no speaker has put before the Council. The whole question has been dealt with on the footing, as if some criminal tribes had sprung up in our midst and were a source of danger which it was the duty and business of everybody, without considering any further or anything more in connection with it, to lay down laws, and the moment you enact laws on the Statute-book you think you have solved the problem. I say, my Lord, that no amount of laying down of laws on the Statute-book will solve this problem. You will have also to change your policy, and considerably, before you can remove the causes. Well, my Lord, with some of the recommendations of the Rowlatt Committee I may agree, but there are others which I am quite sure no civilized Government will accept, no civilized Government will ever dream of putting those recommendations in the form of laws, and I refer particularly to the preventive measures which the Rowlatt Committee has recommended. I will only give some instances, although I quite see that today that question is not before us. The Rowlatt Committee while they made their recommendations, have particularly based them on, and invited our attention to, what they call important documents attached to their report as an Appendix. I feel that it would be very

difficult for any one to deal with these recommendations of the Rowlatt Committee which are based on materials, which are not published, which are not before us, and to which the Rowlatt Committee attach the greatest importance and invite our attention most earnestly. Those papers, those documents, those materials are not before us because the Government decline to publish them. Therefore, I confess, my Lord, that it is not possible for me to criticise their recommendations without having access to the materials which are the foundation of their recommendations. But, my Lord, can you imagine measures of this kind being enacted which they put forward as preventive measures, and I will only read this:

'The first group of powers should be of the following nature:-

(i) To demand security with or without assurance from anybody;

(ii) to restrict residence or require notification of change of residence;

(iii) to require abstention from certain acts such as engaging in journalism, distributing leaflets, or attending meetings;

(iv) to require that the person should periodically report to the police.'

I have no doubt in that case my Hon'ble friend Mr. Sastri will not be followed or shadowed by any officer of the police to which he so much objects. He will be relieved of the persecution that he described here, for then he may have to go and report himself to the police!

'The second group,

(i) To arrest;
(ii) to search under warrant;
(iii) to confine in penal custody.'

Now, my Lord, I say that on the face of it, these are

measures which not only will not put an end to the crimes that you want to see ended, but will lead to further crimes, and no civilized country, I make bold to say in this Council, can tolerate, much less sanction, measures of this character, which are called preventive measures. But at the same time I wish to make my position clear. Whether the Government ultimately realises the point of view which I have put forward today or not, one thing is certain that these crimes must be dealt with, whatever our differences may be as to the policy which the Government pursues in this country. I myself think that it will be much better to adopt judicial procedure instead of having the laws which exist at the present moment and instead of continuing them, which give full powers to the Executive. In other words, to make this clear, instead of giving the powers to the Executive, I would rather that the power was given to the Judiciary, and I would rather even that these offences should be tried in a summary way, by judicial tribunals, because in my opinion, it is a lesser evil than the Executive. I would rather that a proper bench was constituted and that these offences were tried by a special bench. But, my Lord, this is not the time for me to go into these matters. When the Government decide to bring any Bill or proposal I have no doubt this Council will have to deal with those measures. And then will be the time for us to think of it and give our verdict. Therefore, I regret I cannot support the Resolution because it says that this Report should be kept in abeyance. I cannot see what useful purpose can be served by keeping this Report in abeyance. If the Government choose to take action on the recommendations of the Rowlatt Committee, let them do so. Let them put before us a definite measure, and we shall deal with it.

I will say one word more, and I have done. I cannot agree with my Hon'ble friend, Mr. Bannerjee. I really, my Lord, cannot see what the recommendations of the Rowlatt Committee have got to do with Reforms. If anybody chooses to use the Report against us, you cannot prevent it......

MR. SURENDRA NATH BANNERJEE: May I rise to a point of order to correct a mistake my friend has committed.

I did not say in my speech that the Reform proposals have anything to do with the Rowlatt Committee, but what I did submit was, that Lord Sydenham and others are trying to make capital out of this Report as against the Reform proposals.

MR. M.A. JINNAH: Then, my Lord, I hope that they will miserably fail in their attempt. I trust, therefore, that my friend Mr. Khaparde will not press his Resolution in the form in which he has put it.

SIR GEORGE LOWNDES (Law Member): My Lord, I desire not to let pass certain remarks which have fallen from my Hon'ble friend who has just sat down (Mr. Jinnah). It seems to me to be self-sufficiency indeed which will allow an Hon'ble Member of this Council to say with regard to recommendations which have been made by a Committee of five gentlemen of the standing and position of those who sat on the Sedition Committee, that they are recommendations 'which no civilized Government could ever dream of putting into effect'. I quote my Hon'ble friend's words. Those are words which my Hon'ble friend, himself a lawyer, uses in this Council, of a legal Committee of that standing, I say the words condemn the argument. It may be perfectly reasonable to disagree with their recommendations, and it is certainly open to my Hon'ble friend to disagree, but to suggest that a Committee of that standing has put forward recommendations which no civilized Government in the world could even consider......

MR. M. A. JINNAH: The recommendations I read out.

SIR GEORGE LOWNDES: The recommendations he reads out! My Hon'ble friend carefully left out the preface to the recommendations; he carefully left out the conditions under which those recommendations were put forward; he did not read them to the Council.

Mr. G. S. Khaparde then replied to the various points raised by the speakers on his Resolution. He was still hopeful of the Council deciding in his favour. He, however, wanted

the Council to be divided for the purpose of recording the 'Ayes' and the 'Noes' separately.

Mr. Krishna Sahay also spoke on the Resolution and said that he could not support either the first part of the Resolution, or the second.

Before the Resolution was put, Sir William Vincent spoke and in his speech he also referred to Mr. Jinnah's speech where he had described the acts inquired into by the Rowlatt Committee as political and not criminal. Sir Vincent said in this regard:

"......The Hon'ble Mr. Jinnah, in his speech, told us that the revolutionary movement was a matter of politics and not of crime. My Lord, I cannot assent to that proposition for one moment. The cases to which the Report refers are cases of dacoities, of murders and of other offences, often of a most brutal kind. There are those, possibly, who call such offences politics; I call them crimes of the most dastardly character. The Hon'ble Member then said that we ought to go into the causes of all this sedition. His idea, as I understand it, is that no repressive measures alone will effectively eradicate such crime. To that extent I accept what he says, and that is one of the reasons for our Reform proposals. We do not propose to effect our object by repression alone, but simultaneously, as in the past, we intend to make a reasonable advance in political matters along safe lines. As, however, he asks me what are the direct causes of this revolutionary movement, I answer that there are misguided people, who wish to destroy the Government of this country before they are ready to substitute anything in its place. It is due to the entire failure of certain political leaders to control the non-politically minded masses. Certain members—not Members of this Council—but members of this party, have by their influence been able to excite visions in the minds of young men which lead to these crimes. They are able to rouse violent feelings, but when these develop into violent and criminal acts, they are absolutely unable to exercise any kind of control over those whom they have roused. That, my Lord, is one of the chief causes

of revolutionary crime in this country. I have only to add that I hope, as I said before, that this Council will, by a large majority reject this Resolution, because the acceptance of it would, in my opinion, be a great disservice to the country and would bring grave discredit on this Council, the good repute of which I cherish very jealously."

The House then divided, registering only two Ayes, Mr. G. S. Khaparde and Pundit B. D. Shukul, and 46 Noes.

The Resolution was accordingly rejected.

Mr. M. A. Jinnah, however, did not vote on either side in this Division.

To give effect to the recommendations of the Rowlatt Committee, the Criminal Law (Emergency Powers) Bill was introduced in the Indian Legislative Council on February 6, 1919.

Introducing the Bill, the Home Member, Sir William Vincent, said: "...Before the war the Government of India were faced with the difficulty of dealing with a number of revolutionary conspiracies or rather with one revolutionary conspiracy of which there were several sub-divisions. The intention of these conspiracies was, by decoity, murder and other crimes of violence, to promote a rising against the British Government and to render the administration of this country impossible...The movement gained considerable strength...It attained indeed such serious proportions that it was really subversive of all good government in parts of the country...It was impossible to cope with this movement under the normal law,......It will be seen that from 1906 up to the date of the Report there were no less than 311 offences and attempts at offences connected with this revolutionary movement, in which 1,038 persons were known to be implicated. Out of that number, 64 only were convicted. In 1915, the Defence of India Act was passed, mainly in connection with certain violent outbreaks of crime in the Punjab. It was not, however, used to any great extent in Bengal though it may have been used to a small extent there. The result was that the revolu-

tionary movement gained further strength, and in 1915 and 1916 there were 64 outrages including 14 murders, 8 of the murdered people being policemen. The Act was then enforced. I think that the specific reason for enforcing it was particularly the murder of Deputy Superintendent Basanta Chatterji. I am not positive on the point as I speak from memory. The result was that the outrages were at once reduced and from January 1917 to February 1918, I believe the total number was 10. I think I am right in saying also that during the last quarter of 1918 there were no revolutionary outrages at all. The obvious conclusion from this is that the measures taken by the Bengal Government (I am citing the Bengal Government because the movement was particularly prevalent there and illustrates the position) have been effective. I think if you read the Report the vital propositions are that under pre-War conditions the machinery of law and order was unfitted to cope with lawlessness of a particular type; that the coming of the war with its emergency legislation really saved the peace of India by providing machinery which could deal with this lawlessness; and that it is unsafe for us now to revert to the previous conditions of affairs, in which these anarchical forces were allowed unrestricted licence to prosecute their designs. It is on the basis of this Report that we have undertaken this legislation.

Immediately after the Home Member's address, Mr. V.J. Patel moved an amendment that the consideration of the Bill be deferred till six months after the expiry of the term of the Council. He said the Executive in India was all powerful and could get anything done, even in the absence of a legislation of the proposed kind. Mr. Surendra Nath Bannerjee spoke on similar lines. He had also given notice of an amendment similar to that of Mr. Patel. He said that under the Defence of India Act, which was to remain in force until six months after the conclusion of peace, and could be extended for another six months, the Government had at its disposal till the end of 1919 legislation to cope with the situation that the proposed legislation sought to deal with. Mr. Kamini Kumar Chanda whole-heartedly associated himself with the remarks

of Mr. Patel and Mr. Bannerjee. He was followed by Mr. Jinnah:

My Lord, in the first place I may say that I was very glad to hear from the Hon'ble the Home Member, I do not remember his words, but I think he gave expression to this feeling that the Government were introducing this measure with considerable reluctance. I fully expected that and a great deal more from the Hon'ble the Home Member who has been, at any rate for a number of years, in the judicial line and once sat on the Bench of the High Court of Calcutta. My Lord, to any man who believes in law and justice, these measures must seem abhorrent and shocking. The Hon'ble the Home Member said, 'we have got to do this; show us some other remedy and we shall consider it'. Now, before I deal with these Bills and the speech of the Hon'ble the Home Member, I shall place before the Council the grounds on which I am opposed to these Bills. My first ground is this, that it is against the fundamental principles of law and justice, namely, that no man should lose his liberty or be deprived of his liberty, without a judicial trial in accordance with the accepted rules of evidence and procedure. My second reason is, that this is a wrong remedy for the disease, namely these revolutionary crimes, although I for one am prepared to accept as correct the findings of facts of the Rowlatt Committee, that the crimes of the nature indicated have been committed. My third ground is that the powers which are going to be assumed by the executive, which means substitution of executive for judiciary, such powers are likely to be abused, and in the past we have instances where such powers have been abused. My fourth ground is that there is no precedent or parallel that I know of, in any other civilized country, where you have laws of this character enacted. My fifth ground is that this is a most inopportune moment. At this moment I can tell you that high hopes have been raised among the people of this country because we are on the eve of great and momentous reforms being introduced. My sixth ground is that the proposed measures are of a permanent character and not temporary measures intended

only to deal with an emergency of a temporary character. And the last ground why I oppose this measure is that, my Lord, I do not wish to state it by way of any threat or intimidation to Government, but I wish to state it because it is my duty to tell you that, if these measures are passed, you will create in this country, from one end to the other, a discontent and agitation, the like of which you have not witnessed, and it will have, believe me, a most disastrous effect upon the good relations that have existed between the Government and the people.

Now, my Lord, it is not a matter in which you can put one, two or three lawyers on one side and three or four lawyers on the other side and argue this matter out. The question, my Lord, to my mind, is this. First, is it or is it not a fact that these are unheard of and novel measures. That is a fact which cannot and will not be denied. Your justification for coming here and asking this Council to give you sanction to pass them into law is this. The Hon'ble the Home Member will correct me if I have misunderstood him. We had these revolutionary movements and it was difficult for us to cope with them at first, but as soon as the Defence of India Act was passed in 1915 (though the Government for the time being took those powers for the period of the war) you were able to utilise those powers for the purpose of dealing with revolutionary conspiracies and with more success. That being so, the Government is now so enamoured with these powers that it boldly asks the legislature to enact measures of this character permanently, which to my mind is subversive of all principles of jurisprudence. Now, my Lord, there is no doubt, I think it is common sense, that by these powers you can more effectively deal with conspiracies. Nobody will dispute that. But then you will ask me, why do you object to it; why do not you give us these powers? My answer is this, my Lord, that by these powers of an executive character you may be able to get hold of more real offenders but at the risk and at the cost of many other innocent men who will be persecuted and who will have no chance, no opportunity, of a proper trial. Now, that is the fundamental difference between you and as far as I

am concerned. You say these powers can be effective, and so they can be. *But what guarantee is there for the innocent? Then you will ask, do not you trust the executive? My answer is that I certainly cannot trust the executive, because I am a firm believer—I do not care how many Rowlatt Committees will decide and recommend—, I am a firm believer that no man's liberty should be taken away for a single minute without a proper judicial inquiry.* I say, that by these executive powers you may be able to lay your finger on the real offenders, but in trying to get at the real offenders I venture to say, that you would clap many innocent people, and you will clap many innocent people who will be unable to resist the executive orders. Now, that, to my mind, is the root of the whole question. And what is your answer to that? And I say, my Lord, remember you are responsible; remember, once you have passed this law in this Council, your Excellency's Government is responsible, because these laws will then be put into force; they will be put into force by Local Governments, they will be put into force by officials, they will be put into force in various ways by the police. You are giving this power, and I want you, my Lord, to consider whether such a case has been made out as to enact these measures. I am now dealing only with the preventive measures. The Rowlatt Committee themselves admit it, and they also feel embarrassed; they also recognise the fact that it will involve the infringement of liberty of the subject. Take, for instance, your first clause, the important clause in the Bill, section 21, which reads thus:

> 'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may, by order in writing containing a declaration to that effect, give all or any of the following directions, namely, that such person :-
>
> (a) shall within such period as may be specified in the order execute a bond.........

(b) shall notify his residence and any change of residence.........

(c) shall remain or reside in any area in British India so specified;

(d) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and

(e) shall report himself to the police at such periods as may be so specified.'

Then come the more drastic preventive measures in clause 33, which says:

'Where in the opinion of the Local Government there are reasonable grounds for believing that any person has been, or is concerned, in such area, in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further, by order in writing, direct:-

(a) the arrest of any such person without warrant;

(b) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and

(c) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be used by any such person for any purpose prejudicial to the public safety.'

I do not know what is the meaning of the word 'movement', the word might mean anything. Well now, who will give the information to the Local Government that a person is concerned with a movement of the kind defined? Who will furnish the Local Government with materials upon which the Local Government will make its order? I venture to say, my Lord, it will be some police officer. Who else can

it be, except somebody in the Criminal Investigation Department, or the police? It is the police who will furnish the Local Government with information, *ex-parte* information, and upon that information, furnished by the police, the Local Government will say, 'well, here we have got this information, we will make the order', and the order is made and it is final. I am fully alive to the fact that my friend the Law Member was a little bit annoyed when I was speaking on the Rowlatt Committee Resolution of the Hon'ble Mr. Khaparde, and he pointed out to me that these orders are made subject to certain conditions. I can assure my Hon'ble friend that I was fully alive to the existence of those conditions. I would have dealt with them, but my Hon'ble friend forgets that when one is speaking on a Resolution he has only got 15 minutes of life and cannot go into every possible detail. And what are the conditions? After the order is made, after the man's liberty is taken away, under the second and more drastic preventive measures which are enacted, you have an investigating authority. After the man is either in jail, or has been arrested and is detained somewhere, you have the investigating authority. And, my Lord, what is that investigating authority? Here again I am fully alive to the fact that it is suggested that there will be one non-official member on that investigating authority. But what is that investigating authority? It will have the same materials, though it may call for more materials, but the inquiry will be anything but a judicial inquiry. The person who is either under arrest or has been detained will not be there. He may be called by the investigating authority, he may be questioned, but he may not be there. The whole inquiry will be *in camera*, most probably behind the back of the person accused, and the investigating authority is then to make a report. I ask you, my Lord, again what is the good of that report; is it worth anything? I venture to say that the Hon'ble the Law Member, for whose fairness I have the utmost respect, if he were there and if 20 statements were placed before him, and if the accused were not called before him, and he was to investigate behind the back of the accused, without the assistance of any advocate or barrister, I venture to say, my Lord, that even he, with his great ex-

perience of the Courts, is likely to be misled. How are you really going to come to any decision? You know that even in a Court of law, where you have sometimes the ablest counsel on both sides, it is difficult to decide whether a person is really guilty or not, and we know that juries, men of common sense, men of business, have differed. We know that a Court sometimes convicts a man of murder, and you go to a Court of appeal and on the same evidence the man is acquitted. This is a very serious matter when you are dealing with the liberty of the subject. How can you expect this investigating authority, sitting *in camera,* behind the back of the person accused, to come to any really useful conclusion? What happens then? This investigating authority will make its report and the Government is not bound to accept that report. What is the good of it? The Government will say 'we have considered it'. Now this is the condition; this is the most valuable safeguard, the great condition precedent which is made so much of. The same thing will apply in the more drastic preventive measures. Therefore, my Lord, it is no use shirking the issue, it is no use hedging round the whole of this question. It is quite clear and it is obvious that this measure is of a most serious character. It is dangerous. It imperils the liberty of the subject and fundamental right of a citizen and, my Lord, standing here as I do, I say that no man who loves fair play, who loves justice and who believes in the freedom and the liberty of the people can possibly give his consent to a measure of this character. You have got to make out a very, very strong case indeed, and then alone you can come to us and then I can assure the Hon'ble the Home Member that I will tell him 'yes you have made out this case, I shall co-operate with you'. What is the case you have made out? Because there are some revolutionary conspiracies; because, as the Hon'ble Mr. Bannerjee said, you have a small section, a few hundred, or a few thousand if you like, who have taken to revolutionary methods, who have taken to anarchical methods, you come here and say that we are going to enact laws of this character, permanently placing them on the Statute-book, the result of which would be that no man's liberty will be safe in this country. I shall even go so far

as to say this, my Lord, that there will be an end to political life and freedom in this country. No man will be safe. Supposing, my Lord, in some province some offences are committed. The Government of India is appealed to and the Government of India says 'very well, some offences have been committed'—and mark you I have not dealt with the offences here, but the Schedule of Offences includes grievous hurt, rioting, and all sorts of other offences. If tomorrow, for some reason or another, there happen to be three or four riots in the Bombay Presidency, mind you nothing to do with politics at all, the Government of India may be asked to apply this Act to Bombay and the Government of India might intervene and make it applicable to Bombay......

SIR WILLIAM VINCENT: Is the Hon'ble Member quite correct in his citation from the Schedule? Will he read it? He has omitted the sentence 'if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State'.

MR. M. A. JINNAH: I know that perfectly well, but how is this to be ascertained. I know that the draftsman has put it in this way that provided they are connected with any offence against the State, but I say supposing you have offences of this kind. I will give you an instance. Supposing we have somebody who is dissatisfied with some individual official and happens to attack him and causes hurt......

SIR WILLIAN VINCENT: May I point out that section 323 is not in the Schedule at all; the offence of simple hurt is not included.

MR. M. A. JINNAH: I said 'grievous hurt'.

SIR GEORGE LOWNDES: No, the Hon'ble Member said 'hurt'.

MR. M. A. JINNAH: I said 'grievous hurt' just now.

SIR WILLIAM VINCENT: 'Grievous hurt' is also not in the Schedule. Section 326 deals with grievous hurt caused by a deadly weapon.

MR. M. A. JINNAH: I always understood that grievous

hurt is grievous hurt with any kind of weapon.. Therefore, I say that you have got a Schedule of offences to which there is no limit. Of course, I can go into the whole list and take up the time of the Council unnecessarily. But you will find you have got a regular list of offences. They are not offences really confined to offences against the State. Therefore, what do you find? You find that once you get this Act made applicable to any province, then in that province if there is a particular person who is not liked or who is supposed to be undersirable, by some official. I say that person is not safe. If he happens to incur the displeasure of a few high officials in that province, I say that man is not safe, and he has got no remedy. Apart from these details, I say, as I said before, that this is not a matter which you can argue out like two lawyers arguing out a case on one side or the other. As I said before, the question to my mind is this. What case have you made out for these powers to be given to the Government? The answer I give to the Hon'ble Member who appealed to me and said the Council must consider its responsibilities, the Council must realise its position, is this, that you have made out no case. The only case that you have made out is this, that by means of these extraordinary powers which happened to be placed in your hands owing to the war, perhaps you have been able to deal with this particular kind of crimes more efficiently than otherwise you would have done. Now that is no reason for placing these Statutes premanently on the Statute-book. I say you have ample powers as it is; use them by all means, because I do not wish for a single moment to be understood to say that I do not want you to deal with these crimes. Deal with them, but you must also remember this. Are you going to deal with these crimes in co-operation with the people, or are you going to deal with these crimes independently and in spite of the people? You may say that we do not care what the non-official Members think. I venture to say, my Lord, that there is not a single non-official Member that is going to support these measures. There may be one or two exceptions, but, as far as I know, barring one or two exceptions, the rest of them are going to oppose these measures. Not only that. Al-

though the non-official Members in this Council certainly represent a very important volume of public opinion, you have also got the public outside, and I venture to say that the whole of the country is opposed to these measures.

Then you say of course 'we have got the official bloc; we have got the official majority; we are going to carry this'. Well of course you can carry it because you have got the official majority. But I ask you, my Lord, and I ask your Government, do you or do you not accept our assurance when we say that nobody condemns these crimes more strongly than we do; nobody is more ready and more anxious to stop them than we are; nobody is more anxious to co-operate with you than we are? Therefore, will you not listen to us? Does our opinion count for anything or does it not? Does the opinion of the overwhelming majority of the non-official Members in this Council count for anything or does it not? I know it counted when you wanted 45 million Pounds. Is it or is it not going to count today, and, if so, why not? That is the question I ask. My Lord, we have got this question to face. As the Hon'ble Mr. Bannerjee has put it, this Act is not going to expire for six months after the peace is signed. You have got Regulation III in your hands. You have got the power of Ordinance; you can enact this very measure, if necessary. And if in new Councils, when they are formed, if we find and our conviction is this that there will be no occasion; we may be wrong, I am not going to be very emphatic on that point, we may be wrong, but we feel, and, my Lord, I feel convinced that this announcement of the 20th August by His Majesty's Government, followed up by the visit of the Secretary of State for India, and the fact that your Lordship and the Secretary of State for India went all over the country to ascertain the public opinion on the question of constitutional reforms and the publication of your Report, which I for one had never any hesitation in recognising as an advance, and I have said so, not in this Council but outside, had tremendous effect on the people. And whatever differences there may be between your Government and ourselves with regard to those proposals, if we eventually get those reforms in the substantial form that we

expect—and on that point we mean, my Lord, to fight to the end, we will do all that lies in our power, we will do our best, we mean to go further than that Report—but, my Lord, after we have fought the fight, whatever may be the end of it, once these reforms are introduced, I can assure you, my Lord, that you have got men in this country who will then say this: 'We have fought a constitutional battle, we have done all we could in our power, but we have not succeeded to the fullest, but it is a real and substantial advance now these reforms are introduced, let us make the best of them'. And I hope that the Civil Service, on the other hand, will act in the same way. They may fight now, they may resist us now, they may think that they are going to be endangered and they may think that even these proposals go too far; but once the fight is over, I hope that you and we will work in co-operation and do our best to see that those reforms are made a success. At that time, I can assure you, my Lord, and I can assure the Government, if we find that there still exist these revolutionary conspiracies, and if we find in co-operation with your Government that measures of a drastic character are essential, I assure you that you will find men amongst my own countrymen who will stand side by side with you and will be ready to give their assent to laws, however, much they may dislike them. Even then, I can assure you, I shall be loath to give my consent, but I shall do so if it is necessary. Now, therefore, do you think that you will lose anything, do you think that anything serious is going to happen if you accede to this request of ours, namely, to postpone the introduction of the Bill? That is all that we ask. Do you think that you will gain more by carrying this measure by means of your official majority against the will of the people? I say it is against the will of the people throughout the country—and mark my word, what I say is true and will be proved to be true—against the will of the people. Are you going to do that? And I say your only justification for that would be if you can say this to me: 'The danger is so imminent—after all we are here as a foreign Government and we have got to protect ourselves and we have got to maintain peace and order in this country—it does

not matter whether you like the method or not, we are absolutely driven to this desperation, that against the will of the entire people, against responsible opinion in this country, we find we are in such great danger that unless we arm ourselves with these powers our Government is in peril.' Is that so? I venture to say No; it is not what is going to happen. You have got already more than ample powers with you. I assure you that you have, I would not care to go so far as to say the entire community—there may be a small section on whom you cannot count—but almost the entire community at your back; because, believe me, we do not wish, and nobody wishes, that there should be anything but ordered progress in this country. What have you found? I cannot, my Lord, quote Your Excellency's actual words in your speech today; but what has India shown during this War? The good sense of India, the loyalty of India—not loyalty in that stupid sense in which it is sometimes used, but free, sincere co-operation has been acknowledged. Has India failed during these last few years? Then, my Lord, what is the danger, what is the necessity, that calls for pressing on with this Bill at this moment? My Lord, I do not wish to take up the time of the Council unnecessarily. I say, first of all, as I said before, the Bill is really opposed to the fundamental principles of British justice; secondly, I say it is not opportune; thirdly, I say it will create a most disastrous effect on the public mind.

Then, with regard to the details, the Hon'ble the Home Member said that in the Select Committee, if there are any suggestions made on the matters of details, they will be considered; but the difference between us is not so much a difference as to details. The difference, as I have pointed out, is with regard to the principles—the fundamental principles. If there were only a difference with regard to details, I have no doubt that the Select Committee would be able to solve it; and there are many matters of detail which might be suggested to the Select Committee. Take, for instance, the question about the statements of persons who are either spirited away or cannot be found, and so on, by the accused. You say these statements should be allowed as evidence. Well, personally I think that would be a most dangerous

thing, and I will give you my reasons for it shortly. First of all, you will admit that this is going against the ordinary law of evidence—Section 33—which lays down that you cannot have statements of this kind. But without the test laid down in Section 33, you propose that these statements should be admitted in evidence if the person who made the statement has been spirited away by the accused. Now, how is this to be proved to begin with? If the police or those who are interested in putting in these statements without being tested, without being cross-examined upon—if they want to put in these statements, the simplest thing for them to do is to say, if the people who made the statements do not appear, that they have been spirited away. How is this to be investigated? And instead of the real investigation whether a man is guilty or not, you will ask the Court to investigate whether three or four persons who made statements have been in fact spirited away by the accused or not. In other words, you will have a trial within a trial. That is a most objectionable thing at any time, and in matters of this kind you will simply encourage a practice which might be abused. And therefore I say that in the first instance that provision should be taken out altogether. Then you have got many other matters of detail, but I do not want to weary this Council. I have no doubt the Select Committee—if the Bill goes to the Select Committee—will consider these matters.

My Lord, therefore in conclusion I would again make an appeal to your Lordship's Government as a man, my Lord, who is a lover of the Constitution, as a man, my Lord, who is a lover of law and order, as a man who believes in discipline and authority, I would appeal to you to reconsider your position before you proceed with this Bill any further, and I hope that when the new Councils come into existence, there will be no occasion for the enactment of such subversive laws, but I can tell you this that if things do not improve, if things do not change, if things get worse, believe me, you will get responsible men who will stand by you and who will stand by you as strongly as anyone can. I still hope that the Government will consider this, and I say that your persistence with this Bill will be most disastrous.

Both the amendments were defeated. The first amendment, by Mr. V.J. Patel, received 22 votes in favour and 35 against. All the Indians, including Mr. Jinnah, voted in favour. The second amendment, by Mr. Bannerjee, received 21 votes in favour and 34 against. Mr. Jinnah abstained. The Bill was then referred to the Select Committee.

The second legislation based on the Rowlatt Committee Report, the Indian Criminal Law (Amendment) Bill, was moved in the Indian Legislative Council on the 10th of February, 1919. Before introducing the Bill, the Home Member, Sir William Vincent, announced that the Criminal Law (Emergency Powers) Bill, if passed, was to remain in force for a period of three years only, after the conclusion of peace. Regarding the new Bill, he made the following points: "All the provisions of the Bill are based on the recommendations of the Rowlatt Report......The Bill...differs from the Bill I introduced last week, in that it is intended to make permanent changes in the ordinary criminal law of the land. The first clause deals with the possession of a seditious document and is based on Rule 25-A of the Defence of India Rules......It provides that any person who has in his possession a seditious document, intending, that is, with the deliberate intention, that the same shall be published or circulated, shall, unless he proves that he had such document in his possession for a lawful purpose, be punishable with imprisonment which may extend to two years...Clause 3 of the Bill merely authorises a District Magistrate to direct a preliminary inquiry to be made by the police in the case of certain offences, a prosecution in which cannot at present be launched without the sanction of the Local Government. Clause 4 of the Bill makes a modification in Section 343 of the Code of Criminal Procedure. That Section prohibits the offer of any promise, or threat, or inducement, to any accused person to make a statement save to the extent provided specifically in Sections 337 and 338 in the case of conditional pardons. It has been found that this provision of the law interferes with a promise of protection to an accused person who is willing to give King's evidence, but is really afraid of violence, indeed often of being murdered, by his confederates; the intention is to enable Government to offer

such protection to a person who is prepared to give evidence if protected. Clause 5 of the Bill introduces another new Section into the Code of Criminal Procedure, and provides that where a person is accused of an offence against the State, that is, an offence under Chapter VI of the Indian Penal Code, evidence of the fact that he has previously been convicted of a similar offence, or that he habitually and voluntarily associates with any person convicted of such an offence, shall be admissible against him."

Mr. V.J. Patel moved exactly the same amendment to this Bill as he had moved to the Criminal Law (Emergency Powers) Bill, but it too was lost.

The Report of the Select Committee on the Criminal Law (Emergency Powers) Bill was taken up by the Council on March 12, 1919. Mr. Surendra Nath Bannerjee moved an amendment that the Select Committee's Report, together with the Bill and the connected papers, be referred to Local Governments, High Courts and public bodies for criticisms. Mr. K.K. Chanda moved an amendment which was to the same effect. Mr. G.S. Khaparde also moved an amendment to the effect that the Bill be republished in the 'Gazette of India' in English, and in all the Provincial Gazettes in English and in the principal vernaculars of each province.

Mr. M. A. Jinnah spoke on Mr. Bannerjee's amendment:

My Lord, I had no intention of taking part in the debate on this motion, because I understood clearly from what fell from your Lordship that the Government had made up their mind not to accept the motion of my Hon'ble friend, Mr. Bannerjee. But the only hope that I have still left is, that I may be able to convince Mr. Ironside, if he is, as he says, open to conviction; although I recognise that it is a very difficult task having regard to the manner and tone of his speech. However, I will make an effort. My Lord, Mr. Ironside says, first of all 'Why do you want to postpone this thing?' Now, I will try and explain to him the object of the postponement. To begin with, this Bill is brought into this Council by an executive Government, an executive Govern-

ment that has got no mandate from the people at all. The executive Government means the Governor-General in Council. They have decided to undertake this legislation upon the recommendations of the Rowlatt Committee. The executive Government consists of a small number, and I have my doubts, my Lord, as to at least some members of that executive Government as to what they think of this piece of legislation. I also have, my Lord, my serious doubts and I cannot believe that men of the type of the Hon'ble the Law Member, men like Sir C. Sankaran Nair could possibly have in their heart of hearts really liked this measure or given their sanction. Even, my Lord, as regards Sir George Barnes, a member of the bar, I say I have my doubts. What do you then find? You find that the Executive Council have determined to bring these Bills before us, this Executive Council with an official bloc behind, who are not given any discretion in this Council to vote according to their own conscience or take part in this debate according to their own judgement. The Official majority are under order to vote for the Bill. We were told by the Hon'ble the Law Member that the Government of India (which means the Executive) had considered this matter, and that they were not going to surrender their judgement. Now, my Lord, it is for that very reason and because this Council, this Legislative Assembly is so peculiarly constituted that in all its wisdom it has invariably obtained previously even in trumpery matters the opinions of Local Governments, High Courts and all public bodies, otherwise there is no check or means of stopping the executive in its determination. I do not for a moment doubt that their conviction is based on grounds which appeal to them. That is not the point. Nobody has suggested that the Government have acted with sinister motives; nobody says that the Government is not convinced. But you forget that the Government, as it is constituted, has no check on it of any kind whatsoever. You find that the executive, or the Governor-General in Council, have decided that these Bills must go through. You find in this Legislature an official majority at their back who are under orders to vote for the Bill and you find every non-official Member opposed to it. Now, how

is the issue to be decided? Are we wrong or are you wrong? That is the question. Have we gone mad? There is not a single non-official Member in favour of the Bill. My Lord, this is a serious situation. I appeal to the Hon'ble Mr. Ironside, are we wrong under these circumstances to say, 'please stay your hand'? Let us get outside this Chamber. In this Council-Chamber the atmosphere is surcharged with two elements: you are determined to carry the Bills through; we, on the other hand, are determined to oppose the Bills to the last. Now, my Lord, I appeal to any reasonable man, is the situation not serious? Should it not be solved? We say, get the opinions of Local Governments, get the opinions of High Court Judges, get the opinions of public bodies. If Mr. Ironside is right that Indian gentlemen with whom he is prepared to stand on equal terms anywhere told him that they want his Bill in Bengal for the safety of the saner section, well, let us have their opinions. Surely, if responsible people in Bengal have come to that conclusion, would not your hands be strengthened. I see the Hon'ble the Law Member shakes his head. My Lord, I have so much respect for him that I can never say anything against him, that is not possible, but I will say this, my Lord, that he is still a mere advocate and when once he advocates a cause he is nothing but an advocate. My Lord, I am surprised at his attitude, but this is rather going away from the merits of the motion, but I am really surprised that the Hon'ble Mr. Ironside, an Englishman, I believe I am right, but he may be a Scotchman, anyhow he is a Britisher, should say that there is a small section, admittedly a bad lot, a wicked lot, that this Bill is intended to deal with them. And why is this bigger section, this saner section so much excited over it? All I can say to Mr. Ironside is, please peruse your own history, your people in England have fought for this since the time of King John and they have shed their blood in order to maintain this principle that no man's liberty is to be taken away without a trial. It is not the wicked we want to protect, it is not them that we want to see escape being brought to trial; it is the innocent we want to save. Can you imagine what the passing of these laws means? No Englishman could stand here and allow, if it was his own country, a

law of this character to be passed and say 'what does it matter, because there is a small gang of men who are committing political crimes, I shall accept these laws'. What did you do in England? I am astonished that Mr. Ironside does not know his own history. Even under the Defence of the Realm Act in England at the time of this great war, no British subject could be interned for more than six days without a trial unless he was of hostile origin or associations. We gave you power here to intern a British subject in this country without a trial under the Defence of India Act. What do you find in England? I would ask Mr. Ironside to read a judgement if he wants to do so, delivered in 1917 by Lord Shaw.

A German, but naturalized British subject, was interned for 18 months; members of the English Bar and some of the Judges subscribed to his defence fund in order that his case should be taken to the House of Lords. I have been brought up in your own school, Englishmen have been my masters and I think that this measure before the Council involves an upheaval of constitutional rights. If you say 'we are the Executive, we have a majority, and we are determined to carry this Bill through, no matter what you say, no matter what you think'; if you say that you are determined, I have nothing more to say but that the consequences will be most unfortunate. What are you going to gain by this? I fail to understand. But we have come to a crisis, an impasse, and I ask what is going to be lost by postponing this Bill till September. I entirely associate myself with the remarks of the Hon'ble Mr. Bannerjee. In regard to the reform proposals my expectations are not those of other people, they are not extreme expectations, but I believe that they will go a great way to clear the atmosphere. My Lord, it was said that it will make agitation worse. There again I am not going to be a prophet. But how is that possible? Why do you say that agitation will be worse than what it is at the present moment? I say the agitation is at its height at the present moment. I have today received a telegram from the non-official Members of the Bombay Legislative Council. The Hon'ble the Law Member says 'Oh, agitation will be

what the politicians choose to make it'. I can tell the Hon'ble the Law Member that if he had any experience of the public life of my country, I am sure he would never have said that. 'Agitation will be what the politicians choose to make it!' All I can say is that this is a great mistake. The non-official Members of Bombay have sent me the following telegram and it is signed by Mr. Gokhal Das Parekh, the mildest of the mild men, and on this point I am sure the Hon'ble Sir Dinshaw Wacha will bear me out. This is the telegram: 'The Association of non-official Members of the Bombay Legislative Council unanimously resolved at their meeting today to request you to express their emphatic protest against the Rowlatt Bills; please read this telegram to the Council'. By your meeting this very simple request your position is not in the least prejudiced. If Government in deference to public opinion stay their hands, at least for a short time, what will be lost?

Then, my Lord, another argument which was advanced by my friend Mr. Ironside, and I believe that is an argument which appeals also to some of the officials; it is that if you make any concession to public opinion, it will at once be taken as a sign of weakness. Such a monstrous argument was never advanced before in this Council. Does Mr. Ironside think, my Lord, that we here in the Council and a large body of men outside this Council are so stupid as to think that because the Government have in the clearest possible case met public opinion and made a concession, that the public would construe it as nothing but weakness on the part of Government? In that case, the safest rule, my Lord, is that, the moment Government once come to a decision, however, wrong it may be, however, flagrantly wrong it may be, the Government must stick to it, because you have come to a decision. The public may oppose but it is your duty to say, 'we are not going to be called weak, no matter how hopelessly wrong we may be'. Is that weakness? I say it is not weakness, it is injustice. But to do the other is strength. You are not in a position to gag the mouth of every individual when there are 300 and odd millions of inhabitants in this country; there may be a man here and there,

there may be a little bit of a rag that may talk in this fashion that the Government had to give in, the Government had to bend and all that. But, my Lord, would you hear such a sentiment from any responsible man? We know perfectly well, every Indian who has got any sense in him knows perfectly well, that you are all-powerful, you have got the power, you have got the strength, you have got the force behind you, and you can put into force any law you like. Any man who has the slightest intelligence understands that. Well, then what is the good of bringing this argument? My Lord, it is an argument which is put forward with a view to really stiffen the back of the Government. Those, my Lord, who want the Government to persist in the wrong course always like to bring forward this argument in order to stiffen the back of the Government, because they do not want the Government to come to right conclusions. That is all that I can say about this line of argument.

Well, my Lord, coming to the third point raised by the Hon'ble Member from the Punjab, the Hon'ble Mr. Fagan, he said, 'Oh, well, we have got here all the talents, all the abilities of both officials and non-officials', although officials here are not allowed to exercise their judgement nor are they allowed to vote as they like, not even Mr. Fagan is allowed to vote as he likes, but he says, 'we are all here, we have got the orders to vote and we have got to vote'. Well, if that is going to be the principle, my Lord, and the Hon'ble Mr. Ironside also asked who is going to legislate, we or the High Court Judges, and observed that we are the Government, and we have to legislate. Mr. Fagan says, 'we have got all the talents here, what more do you want'. But, my Lord, may I ask a simple question that if that is so, why is it that any Bill is ever allowed to be published at all; why is ever any Bill sent for opinions to Local Governments, to the High Courts and to the public bodies, why is it ever done, I repeat? We are to legislate, we have got all the talents here, what more do we want? No, my Lord, the object of this is that we want outside opinion, opinions from different parts of the country, opinions from men who are both in close touch with the actual administration of the country and also

with the public life of the country. That is the object, and it is a very wise and a very salutary practice; we must not arrogate to ourselves that we alone here have the concentrated wisdom centred in Delhi or in this hall. Therefore, my Lord, I submit with the utmost respect that the Rowlatt Committee's recommendations are *ex-parte*. The decision of the Executive Government has been arrived at without due consideration of the matter. I do not doubt for a single moment the convictions of the Government or at least of some of its members; I do not doubt the sincerity of the Government. But I say, my Lord, and I do beg of the Government to take note of this: Do you doubt our sincerity of opposition? Do you doubt our convictions? Do you think that you have welfare of my country at your heart and that I have not? Do you think that I want disorder and you do not want it? Is there a man in this room amongst us whom you can point out and say that there is one man here who would like to see the welfare of my country being sacrificed? But, my Lord, why is this position taken up by us? And I do ask you, and I do appeal to you, to pause. My Lord, I had got up merely for the sake of convincing Mr. Ironside, and I do ask Mr. Ironside, were he an Indian standing in my position and if he understood this measure, and its effects, if he had been brought up in the traditions of Great Britain, as I am, would he not feel what I am feeling and say what I am saying? I am sure he would.

During the clause by clause reading of the Bill, Rao Bahadur B. N. Sarma moved an amendment that in clause 2(1) the following definition be inserted:

> "Revolutionary movement means a movement directed to the overthrow by force of His Majesty's established Government in India."

Mr. Jinnah spoke in favour of the amendment:

My Lord, as my Hon'ble friend Mr. Shafi has said just now, no amount of speeches on behalf of the Hon'ble Member in charge of the Bill will avail for one single moment when we come to a Court of law to construe the Statute. The Hon'ble the Law Member showed a great deal of annoyance

on this point and said: 'We have no desire to interfere with constitutional movements'. There is no need for indignation; we know that the Government have said that over and over again. There is no need for repeating it. We know that you say you do not wish to interfere with political movements. But the Bill is going to become law and therefore, my Lord, we cannot take too much care in considering every single clause in this Bill before it leaves the Council. Then the Hon'ble the Law Member says that in the Select Committee, non-official Members on the one side and the Government on the other side, have agreed to this. But if you have agreed to this, is not this Council or any Member entitled to point out something new and say 'although you have agreed to a particular phraseology, yet there is a flaw in it?' Is this Council merely a machine? Because in the Select Committee the Government, on the one side, and those who were appointed Members of the Select Committee, have agreed to a certain clause, is it not open to us to point out that there is some flaw? Is this the answer?....

SIR GEORGE LOWNDES: I think my Hon'ble friend has misunderstood me. I did not mean to suggest that. In the Select Committee we accepted the dictionary sense of the word. It was a compromise on this basis and nothing more.

MR. M. A. JINNAH: That is what I object to; this is not a question of a compromise; this is going to become a part of the law of this country; it is not a question of compromise. What you have to do is to make your intention clear. Is this clause right or is it not? That is the question that the Council has got to consider. Some may have had the privilege of being on the Select Committee—every Member of this Council cannot be—but we are entitled to say 'here is a flaw and we press on you that, that should be put right'. I attach no importance to your compromise. I do not wish to add a single word to the reasons that have been already advanced in support of the amendment. I hope the Government will see that there is no answer to this point.

The House divided to take vote on this amendment,

with 18 in favour and 33 against, (Mr. Jinnah voting in favour).

The object of Part I of the Bill was described as the speedy trial of certain offences. Mr. V. J. Patel moved an amendment that the Part be deleted. Mr. Jinnah spoke in favour of the amendment

It seems to me, my Lord, that the Hon'ble Member who spoke on behalf of the Government has not appreciated the point of Mr. Patel's amendment. Mr. Patel's point, as I understood, was this. The Act of 1908 was avowedly passed for this purpose, as the Preamble shows: 'An Act to provide for the more speedy trial of offences....dangerous to the public peace'. Therefore, the object of that Act was, firstly, speedy trial. The object of the first Part of the Bill now before the Council is also speedy trial. The Hon'ble Mr. Patel does not quarrel with that at all. The Hon'ble Mr. Patel says, 'You have already got a Statute which is called the Indian Criminal Law (Amendment) Act, 1908, and if your object is to have a speedy trial, or I will put it in this way, my Lord, a speedier trial, if you please, why don't you amend the Statute which is already in existence? That is the point. The Hon'ble Mr. Patel, as I understand him, says that instead of doing that, you have practically reproduced that Statute, with some modifications. One would have thought, my Lord, that the proper course, the simplest course, was to amend that Act, if you want a speedier trial. If that alone was the object of the Government, I am sure, my Lord, that in this Council with regard to that object, the Government would have received a great deal of sympathy and support. But I cannot really understand what is the object of the Government in repeating Statutes. You have got one already on the Statute-book; you want to have another.

The motion when put was negatived.

A large number of amendments were introduced to the various clauses of the Bill, as each one of them was taken up by the Council, but they all failed. Mr. Jinnah was obviously

convinced of the futility of the exercise, and not only did he not move any amendment, he also did not take active part in the discussion on these amendments. He spoke briefly on a couple of occasions and then again, more to clear up the ambiguities that arose regarding the import of some of the provisions of the Bill than to try to introduce any material changes in the Bill.

Thus all the clauses from 1 to 16 were passed without incorporating any of the amendments.

During the discussion on Clause 17, Mr. Kamani Kumar Chanda moved the following amendment:

> 'That the following further Proviso be added to Clause 17:-
>
> 'Provided further that:-
>
> (a) The accused shall have the right to appeal, both on facts and on points of law, from a capital sentence, to a full Bench or full Court of Judges of the High Court, consisting of not less than five Judges, none of them having formed the Court which passed such sentence. In case there are not five Judges in the High Court, excluding the Judges who passed the sentence, the Appellate Bench shall be formed of Judges of the High Court in question and some other High Court with the consent of the Chief Justice of the latter; and
>
> (b) On a point of law being reserved by the Court on application by the defence, or on a certificate being granted by the Advocate-General, attached to the High Court concerned, and in cases where there is no such Advocate-General, on a certificate by any Advocate-General, the matter shall be considered by such full Bench or full Court, composed as aforesaid.'

After Mr. Chanda had moved his amendment, Mr. Jinnah took the floor:

The arguments, my Lord, and the earnestness with

which Mr. Chanda has presented them are such that they might melt the heart of anybody, and if I were a Judge and he were to appear before me, I think he would win most of his cases; but I feel that the Government is sitting there hardhearted, absolutely determined not to yield. Nothing seems to move Government in the matter of these amendments. Amendment after amendment has been moved and been rejected. I am beginning to think, my Lord, at the end of these two days, whether it is not a sheer waste of public time that these amendments should be formally talked about in this fashion and rejected. Perhaps it would be better, my Lord, in the interests of public time, if the Government declared once for all that these are the small minor amendments of yours which we are prepared to accept; as to the rest we have made up our mind and, therefore, if you like to go on, you can go on, but we have got the majority and they are going to be rejected. If that were declared, it would save a lot of time and put an end to this agony—it must be an agony to the Government; certainly it is an agony to me, to sit here and see this mockery of debate going on for two days and every amendment is rejected. Now, my Lord, what is the position? The position is this. We are told in the first instance that the Governor-General in Council will notify that this Part I is to be applied to a particular area. The Governor-General in Council is to decide as to the revolutionary movements according to the dictionary meaning. Very well, granted. And we are told that the Local Government will then apply to the High Court for a special tribunal, and we are told that when that tribunal is constituted, it is going to be governed by special rules of evidence and procedure, not normal rules of evidence, not normal rules of procedure, but extraordinary rules of procedure, and certainly abnormal rules of evidence. Then we are told that this tribunal can sit *in camera*, in effect. Then we are told that this tribunal will have no jurisdiction to go into the question whether a crime with which a person is charged is connected with revolutionary movement or anarchical movement. Then we are told that the judgement of that tribunal shall be final and no appeal shall lie. Then we are told that even if there is a difference of opinion, no appeal shall lie.

Now, my Lord, we come to the last straw. There is enough to break the camel's back, and that last straw is, will you or will you not agree to a higher tribunal as a corrective, as a revisional tribunal? I quite agree with the Hon'ble the Law Member that the Bill does not give the right of appeal, but it gives the right of revision. When the higher tribunal revises it has got the right of review, and I think Mr. Chanda was a little confused on that point. In reviewing, it may go into the whole case, but there is a distinction between the right of appeal and the right of revision, and so to that extent the Hon'ble Member is correct, but what Mr. Chanda is asking for is revision and are you going to deny that also? On what ground? Because the Rowlatt Committee has said so? But, my Lord, is the Government of India going to surrender its judgement to the Rowlatt Committee? Is the Council going to surrender its judgement as a whole to the Rowlatt Committee? Surely, my Lord, this Rowlatt Committee has not acquired that sanctity and that infallibility. I ask the Government still to consider this. We know that in case of a trumpery character, of a civil nature, to the amount of Rs. 10,000 of property value, you can appeal against the judgement of the High Court Judge who tries it, and we have known times out of number, cases, when there were questions of law, and there were full Benches of three and five Judges on trumpery civil questions involving more than Rs. 10,000 which were taken to the Privy Council. Well, my Lord, when a question of Rs. 10,000 is involved you have got these rights, but where you have a question of life and death, where you have laws of an exceptional character, which are admittedly subversive of ordinary procedure, of ordinary principles of law and justice, intended for a special peculiar case, are you going to be so hard as to deny to that criminal, as Mr. Sastri very well put it the other day, even the opportunity to carry his case as far as he can and prove his innocence if he can? Why should that revision right he denied to him? Under the ordinary Criminal Procedure Code in cases of a trumpery character—now I am talking of criminal cases—what do you find? An order is made by the magistrate, an appeal is carried to the Sessions Court and it is carried to the High Court. You have three Benches of three Courts dealing with that case and the object of it is not that the

High Court Judges are eminent lawyers and, therefore, it is a very good Bench and, therefore, you do not want another Bench. I do not for a moment say that even a revision Court is infallible. Of course, if you go on arguing like this, there is no finality, but the important question is this, that if you have one tribunal that has decided a particular question and you have an appeal or a revision, you have a different tribunal that brings its mind afresh to bear upon that particular case, and that is the importance of having a second tribunal. They may be all High Court Judges, but you have a different tribunal. My Lord, I do not wish to keep the Council any more at this late hour, but I really do press this upon you, that you should, in fairness even to these revolutionaries, these anarchists against whom you feel so bitterly, and I assure you I feel equally bitterly, give them a fair chance and let them have at least the revision.

Amendments were also moved to Clause 18 of the Bill. Mr. Jinnah again took the floor:

When the Bill was introduced, my Lord, I think I referred to this point as an objectionable one, and on that occasion the Hon'ble the Law Member seemed to take it that it was the gravest objection that I had raised. I think he said that, but unfortunately I think he did not hear what I said. That was one point. My first objection was on principle. My second objection was that it would create a trial within a trial. That was not the only objection. On that occasion the Hon'ble the Law Member said this (I am quoting from his speech): 'I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an Assembly which contains so many lawyers'. My Lord, if he had said, 'in an Assembly which contains an able Law Member' and therefore that it was unwise on my part to argue, forgetting that there was an able Law Member, I would acknowledge that. But I do not know what the suggestion means. Does the suggestion mean, my Lord, that I forgot that I should be found out in this Council? Because I am sure that even a minor lawyer of a few years' standing, much less an able Law Member, is acquainted with Section 33. Now, my Lord, we know what Section 33, is,

and why I emphasise this point, that it will create a trial within a trial, is for this reason, that more value will be attached to statements which are not subjected to the conditions laid down in Section 33 than to statements and evidence which have gone through the requisite conditions laid down in Section 33. Under Section 33, you first of all have the evidence of a man who has given evidence in proceedings where the parties are there, or their representatives. He is cross-examined, and when a man is cross-examined there would not be the same trouble because he has gone through the test and, therefore, there would not be that temptation as there would be in a case where the man has made a statement behind the back of the other party and that statement is produced in Court and tendered as evidence and not subjected to the test of cross-examination, which after all is the greatest possible test of truth. If you can possibly find out whether a man is telling the truth or not, you can only do it by cross-examination and not otherwise. Under these circumstances, I impress upon the Government and those who are responsible for this Bill that you will have much greater chance, more likelihood of there being a trial within a trial, and I will illustrate my point in one word. Suppose I am right to this extent, that the police themselves are very anxious to get in the statements of X, Y, and Z, without putting them forward to the test of cross-examination, because they are greatly afraid that if these men are cross-examined they will break down. Well, the natural thing for them to do is to say to the Court, 'X, Y, and Z, have made their statements. They have been spirited away by the accused; we cannot produce them'. 'Oh!' says the Court 'it satisfies me'. We know, and I can say with a certain amount of confidence, that you can always get two or three witnesses who will come forward and tell a story which will *prima facie*, satisfy the Court that, we will say, X was seen with the accused on the day previous. Somebody will come and say that; also that Y was seen with the accused on the day he was leaving the station and is not to be found, and that Z was last seen in the company of a brother of the accused and cannot be found. Well, what is the accused to say to that? What answer has the accused to give? He can

only say he knows nothing about it; and what will the Court do? The Court will say, 'I have got three witnesses and these three witnesses say that X, Y, and Z were seen either in the company of the accused or a relation of the accused just a day or two before and they are not to be found any more'. I say that would be quite enough to induce the Court to admit the evidence. Then I quite appreciate the point of the Hon'ble Law Member. He says, 'Of course, that might make out a case for admitting the evidence, but what value is to be attached to it is a different point'. I quite appreciate it; it is perfectly true. The Court may not be misled by that evidence. But notwithstanding that, may I point out—and I am sure the Hon'ble the Home Member who has himself been a Judge and knows better than I do, because I am sure that he has dealt with more criminal cases than I have, as a Sessions Judge and as a District Judge—does it or does it not leave some impression on your mind if *ex-parte* statements are admitted? Would you or would you not begin to wonder perhaps that they are true? Will they or will they not affect you? Further, may I point out to the Hon'ble the Home Member, who has got the experience of having tried these cases as a Judge, that if these stories are concocted, they are so cleverly concocted that even a very shrewd Judge may fall into the snare and take them to be true? Therefore, my Lord, I submit that I know there is a similar provision in the Act of 1908, and probably that will be trotted out and I shall be told that there is such a provision already. My answer is that two blacks do not make one white. That is my answer; and the fact that you have already a similar provision in another Act, that you have already committed one blunder, does not warrant that you should commit the same blunder again. That is all that I can say.

The Law Member, Sir George Lowndes, in reply to Mr. Jinnah's remarks said:

"My Lord, this is no time of day or night for legal dialectics. I propose to answer what my Hon'ble friend Mr. Jinnah said in a very few words. I do not suppose there is anybody in this Council who does not know as well as he

does that evidence that has not been cross-examined to is not of the same weight as evidence that has been cross-examined to. The question is not as to the weight which should be attached to such evidence, but whether it should be admissible under this section. Then there was the suggestion that the police might keep a witness out of the way and then come to the three High Court Judges, as my learned friend said, and would try and persuade them on the evidence of two or three false witnesses that they had been spirited away by the accused.

"Well, I have some experience of Courts, and I have listened to plenty of members of my profession trying to convince one High Court Judge of something of this sort. But in this case they would have to convince three High Court Judges. Do they think that High Court Judges are fools? It is really an absurdity. Therefore, I say that no answer of any sort has been made to the point by my Hon'ble and learned friend."

After a number of other amendments had been put and negatived, the Council adjourned. At the start of the consideration of Part II of the Bill, Mr. V. J. Patel moved for the deletion of this Part. Mr. Jinnah's speech on the occasion follows:

My Lord, this Part of the Bill is, as I said on the very first occasion, to me abhorrent and shocking and on that occasion, my Lord, I stated my reasons for it. I would not really have spoken in the Council on this motion of the Hon'ble Mr. Patel's, more than by merely saying that I am strongly opposed to this Part of the Bill, and I would have done that, my Lord, for this reason, that I really feel that I connot even trust myself to discuss this Part, lest I may give vent to my feelings and my opinion, which I honestly say to this Council, I cannot possibly express in words, namely, my repugnance for this Part of the Bill. But it is the first time that the Government side have tried to meet the real point in this debate, and that point having been made, I venture to make a few observations.

The Hon'ble Sir Verney Lovett quoted me, but only

portions of my reasons for opposing this Part II. Therefore, as he has quoted me, he does not quite correctly represent my position or the grounds of my position. But I will meet his point. And the point which he endeavoured to make was that there is real danger, and that being so, are we, as a Government, not entitled to enact this measure into law? Now, my Lord, that is the sole question which the Council has got to decide. If I may quote an authority—and I am quoting Blackstone who has been quoted by Lord Shaw. (I am not quoting this as a judgement, but merely as a quotation from Blackstone and for convenience sake I am quoting it from his judgements.) This is what he says:

> 'Blackstone is quite clear upon the practice of the Constitution. He searchingly treats the case both of liberty and life as tests both and equally of one and the same principle—the very principle which is under scrutiny in the present case. To bereave a man of life or by violence to confiscate his estate without accusation or trial would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to jail where his sufferings are unknown or forgotten, is a less public and less striking, and therefore a more dangerous, engine of arbitrary government.'

And this is, my Lord, the point.

> 'And yet sometimes when the State is in real danger, even this may be a necessary measure.'

Therefore, my Lord, to stop here for a moment, this measure is justified by the Government on the ground that the State is in real danger. Now I shall proceed:

> 'But the happiness of our Constitution is that it is not left to the executive power to determine when the danger of a State is so great as to render this measure expedient.'

My Lord, I repeat this—What is happening here? Who is determining that danger to the State here today? I em-

phatically say, the executive Government. The Hon'ble Sir Verney Lovett said, 'If a danger was made out in my own country, my own countrymen would have no hesitation in passing a measure of this kind'. My Lord, I venture to say that we have the case of Ireland in front of us, and I am sure the Hon'ble Sir Verney Lovett knows more about Ireland than I do. Have you taken any steps of this kind in Ireland? Are there not revolutionary movements? Is Ireland not in danger? Did you not find that in the midst of this war, when the Empire was in the throes of danger and death, Ireland was conspiring with your enemies and rebelled? What has happened in India? In India it is acknowledged that a large body of men are absolutely loyal. Because a few hundred men or a few thousand men have gone astray, and there again, my Lord, I make bold to say in this Council, that wrong as their actions are, I again repeat what I said, that it is also due to your policy; and because from this position you ask us to enact measures of this kind which are opposed to the teachings of history, which are opposed to the fundamental principles of the constitution, which are opposed to the fundamental principles of justice. And says the Hon'ble Sir Verney Lovett that I admitted that it is common sense, that if I give these powers to Government, the Government will secure a large number of guilty persons. Of course, if you spread your nets with these arbitrary engines you will certainly get a larger number of the guilty; but how many will you also take into that net of yours who are innocent; and why should the Legislature give you such powers unless the State was in real danger, and what is the danger that you have made out? That is the sole question. I shall proceed with my quotation, my Lord:

> 'The authority is Parliament only or legislative power that, whenever it sees proper, can authorise the Crown, by suspending the Habeas Corpus Act for a short and limited time, to imprison suspected persons without giving any reasons for so doing.'

Therefore, My Lord, if these powers are given to you, you will be imprisoning suspected persons, not necessarily guilty persons, and if you are going to suspect 500 people,

I daresay in that 500 lot you may have some really guilty ones. But what about the innocent? The Hon'ble Sir Verney Lovett, my Lord, on the last occasion gave us a harrowing account of those whose properties were robbed and those whose lives were taken away by some of those revolutionaries and he said, 'what about them?'

My Lord, I am equally anxious to protect them. I entirely agree with him that they are entitled to the protection of Government. But they at any rate were there face to face with the person who assaulted them; they at any rate had the chance of giving it back. But what about the innocents that will get into your net? What chance have they except to rot in jail without a remedy? My Lord, therefore, I quite agree, I quite admit that; and I again say this to Sir James DuBoulay, who spoke on behalf of Government. I assure you that if I was convinced that the British rule was in danger, if I was convinced that there was a real danger to India, I shall have no hesitation, as I said, although in my own heart I shall be loath to give my sanction to a measure of this character, yet I shall do it. But I am not satisfied, my Lord, I am not satisfied that you have made out a case to ask us to place these powers in your hands. What will this be, my Lord? We know that even the Star Chamber were condemned. They at least had the semblance of a judicial trial. Why were they condemned? They were condemned because, in the words of a great constitutional authority, Maitland, 'it was a Court of politicians enforcing a policy, not a Court of Judges administering the law'. That is what you will constitute yourself, a Court of politicians, and what is worse, even without the semblance of trial as there was in the Star Chamber.

My Lord, I do not wish to detain this Council any longer. I do not wish to repeat what I have said, but I really cannot understand, especially in view of the facts which were stated to this Council by the Hon'ble the Home Member, who said that these revolutionary movements—I am not quoting his exact words, but I believe I am correctly representing him—he said that these revolutionary movements were brought under hand to a very large extent. It is said that

the Defence of India Act has done a great deal of good; it is also well known that large numbers of detenus have been released, that things are much better than they were. But Government say, 'Oh, they might at any time get worse; therefore, please pass these laws'. I say, my Lord, that is again opposed to the very fundamental principle. Government say it might get worse. I say these powers can only be granted if Government really feel that there is imminent and real danger. Then you come to the Legislature and I am sure, as I said before, you will have the support of at least some representatives of the people, and I am sure that you will also have the support of the people themselves. By this what are you doing now? Unless I am wrong, and I am sure I am not wrong, the people are against this, and my Lord, I should like to see a Minister in England or the Government in England, however much they may be convinced of the wisdom of a measure like this, bringing a measure in Parliament; and, my Lord, I should like to see Sir Verney Lovett as the Prime Minister. His Premiership will not be worth 24 hours, if he ever dared to bring such a Bill as this. Here the people are opposed and the representatives of the people are opposed; but say the executive Government, 'We have got the welfare of the country at heart, we know your interests; we know your interests better, we know your welfare better than you understand it yourselves. We shall take these powers, and (to use again the words of the Hon'ble the Law Member) we are not going to surrender our considered judgement'. I have not the power that you have. But I make bold to say that we are not going to surrender our considered judgement, and we say that you are wrong, and I hope that the consequences will be less disastrous than I expect.

Mr. Jinnah's last speech on the Rowlatt Report was in the course of the discussion on Part III of the Bill. He did take part in voting on the various amendments but did not vote at the time of the final passage of the Bill on the 18th of March, 1919. His speech on Part III of the Bill was as follows:

My Lord, I will only quote the words of a very great authority before I say anything more. In a very famous

case, which is known as Deniel's case, one of the greatest jurists and lawyers laid down three propositions:

> 'The first proposition is that no man can be imprisoned upon the will and pleasure of any, but a bondman or a villain.
>
> 'The second proposition: If a freeman of England might be imprisoned at the will and pleasure of the King, or by his command, he were in worse case even than a villain.
>
> 'The third proposition: A freeman imprisoned without cause is civilly dead.'

My Lord, the provisions of Part III of this Bill will bring about this result. First, the selection of the victim will be left to the plenary discretion of the bureaucracy; secondly, my Lord, it means the negation of public safety and defence; and thirdly, my Lord, I say that it is poison to the Commonwealth.

My Lord, to quote the words of Lord Shaw in that famous judgement to which I have referred, this is what he says:

> 'In the exercise of power that the Government have, the plainest teachings of history and the dictates of justice demand that, on the one hand, Government power, and, on the other hand, individual rights, these two, shall face each other as party and party.'

He does not say, that it will not be so. Here, in the provisions of this Bill, the Government, as a party, shall act at its own command; the subject, as a party, shall submit and shall not be heard. The Government is at once to be party, judge and executioner. That, my Lord, seems to be Part III of this Bill.

My Lord, I will not take up the time of this Council any more. I say, my Lord, that Part III is the blackest part of this black Bill. And, my Lord, I speak with this passion, with this earnestness, with this feeling, because, if it ever

finds its place on the Statute-book, it will tarnish the fair name of India and Great Britain. I love India, but, my Lord, I do not love Great Britain the less, because it has been the home of my training and education.

The polite words on which Mr. Jinnah concluded his last speech on the Rowlatt Bills did not conceal his disgust with Government's obstinacy, and which he further vented in his letter of resignation from the Council. He wrote:

> 'The passing of the Rowlatt Bill by the Government of India, and the assent given to it by Your Excellency as Governor-General against the will of the people, has severely shaken the trust reposed by them in British justice. Further, it has clearly demonstrated the constitution of the Imperial Legislative Council which is a legislature but in name—a machine propelled by a foreign Executive. Neither the unanimous opinion of the non-official Members nor the entire public opinion and feeling outside has met with the least respect......
>
> 'The Government of India and Your Excellency, however, have thought it fit to place on the Statute Book a measure admittedly obnoxious and decidedly coercive at a time of peace, thereby substituting the executive for the judicial.
>
> 'The fundamental principles of justice have been uprooted and the constitutional rights of the people have been violated, at a time when there is no real danger to the State, by an overfretful and incompetent bureaucracy which is neither responsible to the people nor in touch with real public opinion, and their sole plea is that powers when they are assumed will not be abused.
>
> 'I therefore, as a protest against the passing of the Bill, and the manner in which it was passed, tender my resignation as a Member of the Imperial Legislative Council, for I feel that under the prevailing condi-

tions I can be of no use to my people in the Council, nor consistently with one's self-respect is co-operation possible with a Government that shows such utter disregard for the opinion of the representatives of the people in the Council Chamber, and for the feelings and sentiments of the people outside.

'In my opinion, a Government that passes or sanctions such a law in times of peace forfeits its claim to be called a civilized Government and I still hope that the Secretary of State for India, Mr. Montagu, will advise His Majesty to signify his disallowance to this Black Act.'

III

THE HINDU MARRIAGE BILL

"I say it is incumbent, it is absolutely obligatory, on the Government to grant that liberty of conscience to individuals. Even on the ground of equity and fairness, let those who wish to contract marriages unfettered by the shackles of caste or any other shackles, do so."—Jinnah.

During the second half of the 19th century, the law-makers in India showed considerable interest in rationalising the prevailing marriage laws. In 1856 the Hindu Widows' Remarriage Act was enforced to legalise the marriage of Hindu widows. This was followed by attempts to facilitate marriages between persons belonging to different Hindu castes. In 1868 the draft of a Civil Marriage Bill was presented before the Imperial Legislative Council but before the measure could become law, the term of the Mover, the Law Member, expired. His successor took up the matter but a question arose whether a sufficiently large public opinion was prepared to support the measure. The Brahmos of Bengal, who had moved the Imperial Legislative Council to enact a law for them, expressed the opinion that they were prepared to declare themselves as non-Hindus and to accept the form of marriage prescribed in the suggested legislation. Thereafter, the Marriage Act of 1872 was enforced. A number of marriages were contracted under the new Act. Subsequently, the Privy Council ruled that both the Brahmos and the Sikhs as well as the Jains were Hindus. While the Law Member in 1872 had taken it for granted that if the Brahmos said they were not Hindus, that was the end of the matter, the Privy Council decision upset the reform. Fresh legislation was then considered necessary to enable persons belonging to different

castes to marry. Mr. Bhupendra Nath Basu tried to push a new Bill through the Legislative Council—and Mr. Jinnah spoke in its favour—but his attempt failed. Finally, in 1918 Mr. V.J. Patel introduced the Hindu Marriages (Validity) Bill.

The object of this measure of social reform was to legalise inter-caste marriages between the Hindus, which marriages were prohibited by the orthodox Hindu Law, both according to the *Mitakshara* and the *Dayabhage* schools. In some of the texts it is stated, that the underlying reason for this rule was a desire of the religious law-givers to maintain the ethnic purity of the various castes in the Hindu Society. In Sarkar's treatise on Hindu Law, it is stated that the "account of the origin of the mixed castes, as given by Manu and other sages, shows that there were many of them that sprang from sexual connection between inferior men and superior women."

Obviously, it was to stop this spread of mixed castes, that the makers of the Hindu religious law made a marriage between persons belonging to different castes unlawful.

But it is interesting to notice that sexual connection only between inferior men and superior women is mentioned, and not a case where the connection is between a superior man and an inferior woman. But this distinction between males and females does not appear to be accidental. We would again quote from Sarkar's book:

> "But while dealing with marriage, the sages lay down that marriage between persons of the same caste is preferable, and they also recognise marriage between a woman of an inferior caste and a man of a superior caste known as *anuloma* marriage to be valid.
>
> They do not say anything about the marriage between an inferior man and a superior woman. There are, on the contrary, passages in the *Smritis* providing punishment for a man having sexual intercourse with a woman of a superior class. Thus they do, by

implication, prohibit inter-marriage between a man of an inferior tribe and a woman of a superior tribe, which is called a *pratiloma* marriage."

Mr. Jinnah's speech on this Bill is being included in the present collection because the stand that he took, at a comparatively early period of his political and parliamentary career, on questions of general principles with regard to measures of this nature, did greatly influence the development of a progressive and humanitarian thinking in the politicians of the country.

In particular, we would mention two points.

As far as is known, he was among the first ones in the Legislature of that time, who took the stand that though the Bill did not concern his community, yet it being a measure of reform aimed at bringing about social equality, at least in one field, he felt that it was not only his right but his duty to support the Bill.

It may be mentioned here that this stand of Mr. Jinnah was not shared by other Muslim Members. At a subsequent stage, when the motion to refer the Bill to a Select Committee was being discussed, and the Home Member, through his amendment, wanted the Select Committee to include all the non-official Members of the House, we find that three Muslim Members participated in the debate. They were Major Malik Sir Umar Hayat Khan, Khan Bahadur Mir Asad Ali and Nawab Saiyed Nawab Ali Chaudhri, and they all opposed the inclusion of any Muslim Member in the Select Committee. This was what Mir Asad Ali had to say on this matter:

"Hon'ble Mr. Patel's Bill concerns Hindus, and Hindus only, and opinion is divided among themselves as to the practicability of the measure. Personally speaking, I am in sympathy with the principles of the Bill. For the proposed measure aims at a greater solidarity among my Hindu brethren. With the Hon'ble Mover's optimism on the one hand, and with the Hon'ble Mr. Sarma's pessimism on the other, we, Mussalmans, find ourselves in a delicate situation, and feel

we are hardly competent to pronounce a sound opinion on the measure. Hence it is both inadvisable and undesirable that Mussalmans should be called upon to sit on the Select Committee. Further, no precedent should be created whereby any piece of social legislation affecting a particular community, especially when it is interwoven with religious customs and usages, may come under the review of the representatives of other communities in the Council, except perhaps when the proposed measure is of such a general character as to concern all the Indian communities. For these reasons, I rise to oppose the Hon'ble Home Member's amendment, and if the amendment were carried, I shall have respectfully to decline to serve on the Committee".

This was in the year 1918, and we all know how, what Mr. Jinnah laid down as a principle on questions of this nature came to be accepted on all sides in the following periods of the Legislatures in India. The Muslim Members freely participated in the debates on Bills which related exclusively to Hindu Law or other matters concerning the Hindus alone and, similarly, no one objected to the Hindu Members taking part in the discussion on any Bill dealing with laws applicable to the Muslim community only. It will be noticed that Mr. Jinnah conceded to the non-Muslim Members the right that he claimed for himself: "I am as much interested in coming to the rescue of the Hindu minority suffering today because of this law as anybody else would be interested in coming to the rescue of a Mussalman minority if it was suffering".

Here we may also mention that the cause of the uplift and emancipation of the oppressed Harijans was not a momentary or passing emotional upsurge in Mr. Jinnah's character. We all know how, many years later, when a choice was given to him to nominate the Muslim League representatives in the Central Cabinet of the Provisional Government in undivided India, Mr. Jinnah included in his list a person belonging to the Harijan caste, Mr. Jogendra Nath Mandal, a gentleman who was again appointed a Minister in the First

Government in Pakistan, when Quaid-i-Azam Mohammad Ali Jinnah was the Head of the State.

The second point to which we wish to draw the attention of the reader is Mr. Jinnah's views on the question whether a social reform should be undertaken only when a majority of the people in the country support it. Those who are sticklers for the formal ritual of democracy, but do not care for the ultimate object of the democratic principle, may, perhaps, have a ready answer to this question in the negative. But then, how are we going to help a minority which is being oppressed by the majority? Moreover, it so often happens that a socially or economically oppressed class is sometimes misled, and sometimes is so helpless, that it cannot freely express itself, and therefore, it chooses to support the oppressor class. What should be the role of a social reformer in such situations?

Addressing the British rulers of India, Mr. Jinnah said: "The argument is that until you get a majority, you should not do it. Now I ask the Government, face to face, if you are going to be guided in the matter only when you get a majority, how many years will you have to wait for it? And is the Government going to stand by, and allow the majority to oppress the minority?"

Throughout his subsequent parliamentary career, Mr. Jinnah continued to be guided by the views that he expressed on this Bill, and acted with courage and imagination to support all measures of social reform, whether or not a majority of the people outside the Legislature were in favour of a proposed reform. A remarkable instance of this was his support for the Sarda Bill, which is the subject of another chapter in this book.

Introducing his Bill, Mr. V. J. Patel said that under the existing Hindu Law, as interpreted in Courts of law, parties to a Hindu marriage must be of the same caste, otherwise the marriage was invalid, unless it was sanctioned by custom. Therefore, suits by either party for restitution of conjugal

rights or by the wife for maintenance or inheritance or by the children for inheritance, succession or possession, were not maintainable. This interpretation of the law entailed serious hardships in individual cases. He then quoted two instances in support of his statement. Both the cases had been decided by the Bombay High Court. In one of the cases, a girl of 16 had married a young man of another caste. They lived together for 25 years and had eight children. Then the husband discarded the wife. The woman avoided going to Court for nine years, but old age and starvation seemed at last to have compelled her to seek redress, and she filed a suit for maintenance. The Court held that, as the parties did not belong to the same caste, the marriage was invalid according to Hindu Law. She could not get any maintenance as her husband's *dasi*, or kept mistress, because, as the Court held, she was not one, as that term was explained in law. She could not be maintained as a concubine because the law required unbroken living together for it, and being a modest Hindu lady, she had refrained from going to Court for nine years. No principle of civil contract, representation, estoppel, *factum valet* or acquiescence could help her, and she was left without any remedy whatsoever.

Mr. Patel argued that obstacles to inter-caste marriages had evil effects, and obstacles on the ground that the parties did not belong to the same caste were detrimental in more ways than one. They sealed up the compartments of caste. They maintained the process of continued inbreeding and generated defective, helpless and despondent progeny. The evils of child marriage and forlorn widowhood, of sales, purchases and exchanges, and even hires of girls to be temporary wives, were due to them. They perpetuated castes, some so small as containing eight persons, and they were responsible for incestuous marriages, polygamy, where there was a superfluity of girls, and homeless, immoral life, where there was a dearth of girls. These and other evils acted and reacted upon each other, and all evils were strengthened to multiply further evils.

But, Mr. Patel said, education, travel, contact in cities with people of other castes and such causes had widened the

outlook of the younger generations whose ideas of marriage, home and life generally were broader, and they resented the evils of obstacles to inter-caste marriages, but they were helpless.

He explained that if the Bill was adopted the law would become permissive. It would restore the autonomy of castes in this respect. It would obviate the necessity of Hindus declaring themselves, as required by the Civil Marriages Act, that they were not Hindus. The Hindu marriage was a sacrament and it was like a rending of the conscience for a Hindu that, after performing all the ceremonies of the sacrament, he had to go to the Registrar and make a solemn declaration that he was not a Hindu. He said that it was in the interest of justice and morality of the public policy that the law ought to discourage the living together of man and woman as husband and wife without legally sanctioned marriages, and at the same time it ought to give all facilities and inducements possible to enter into the sacred relations of marriage with all its moral and legal obligations.

The Bill was opposed by Maharaja Sir Manindra Nandi, who claimed that the proposed law would make for disintegration and was likely to prove prejudicial to the best interests of the Hindu society. He said that it was quite possible that the existing law caused serious hardship in individual cases, but the interests of the community should always be safeguarded and cared for more than the convenience of particular individuals. He had no doubt that the Bill was repugnant to all modern notions of social legislation, as the interests of the community were being sought to be sacrificed to the interest of the individual.

Rai Bahadur B. D. Shukul also opposed the Bill because as an orthodox Hindu he strongly felt that the Bill sought to introduce a radical change in the Hindu Law, which would breed disintegration of the Hindu society. He said he was opposed to the very principle underlying the Bill; it rode roughshod on the time-honoured matrimonial laws and customs; it countenanced a union which would contaminate the

whole society. Nothing could be more shocking to the sentiments and feelings of an orthodox Hindu, he said, as by encouraging inter-marriages between the different castes, it would destroy the sacramental character of Hindu marriages.

The attitude of the Government was explained by the Home Member, Sir William Vincent. He said the Government's position was precisely the same as they had adopted towards a measure on a similar subject, which had been brought forward by Mr. Basu some years earlier. The Government were prepared to accept the motion for leave to introduce, and would be glad to get the Bill circulated in order to get public opinion on it. The Government felt it would be unwise to throw out such a measure without ascertaining Hindu public opinion on the subject. But he made it clear that the Government's support to the introduction of the Bill and its circulation to elicit public opinion did not mean that they were in any way committed to support the Bill at a later stage. The Bill involved a change in the Hindu Law, and for that reason the Government were rightly cautious in their attitude towards it, he said.

Mr. Srinivasa Sastri requested Mr. Patel to withdraw his motion in order that the Bill might be considered by the fuller Council which was expected to be inaugurated in the course of the next two or three years. Further, he said, the Council had European Members, and there were Muhammadans and Parsis. They had nothing to do with the Bill which was confined to the Hindu community. However, if Mr. Patel did not concede to his request, Mr. Sastri said, he was "bound in obedience to my convictions and to the dictates of my conscience, to give him my hearty support."

The motion for leave to introduce the Bill was carried.

The Bill again came up before the Indian Legislative Council on February 25, 1920, when Mr. Patel moved that the Bill be referred to an eleven member select committee (no Muslim included in the list). He said that during the 18 months since the Bill was introduced all concerned had had ample opportunity to formulate their views on the subject.

Analysing the opinions submitted by the Local Governments, he said two Governments (Assam and Burma) seemed to hold the view that the Government of India should oppose the Bill, unless it was proved that there was a great majority in its favour. There were two Governments who felt strongly that the Government of India should support the Bill; they were the United Provinces and Coorg. There were two Governments (Baluchistan and N.W.F.P.) that desired to express no opinion. Three Governments—Punjab, Madras and Bombay—wanted the Bill to be deferred. Five Governments (Bihar—Orissa, the C.P., Bengal, Ajmer-Merwara, and Delhi) felt that officials should not vote on the Bill.

Regarding the opinions of the highest judicial officers, he drew the following conclusions on the basis of the replies received:

> "You will find that as a matter of fact there is no High Court, or Chief Court, or Court of Judicial Commissioner which is opposed to the Bill. Excepting the Bombay and the Calcutta High Courts, who do not express any opinion, all other highest Judicial Courts in India are in favour of this Bill."

Regarding the opinions expressed by the Hindu community, he said; "the whole community of my Shudra brothers and sisters is entirely in favour of this Bill, and I can say without fear of contradiction, Sir, that almost the entire non-Brahmin community is in my favour. Having in my favour the non-Brahmin community and the Shudra community (and in non-Brahmins of course, I include the Kshatriyas and the Vaishyas) there remain only the Brahmin community." He pointed out that while many liberal Brahmins had supported the Bill the fact remained that opposition to the Bill had come mainly from the Brahmin community. Even so, nobody could say that the majority of Hindus was against the proposed measure.

Mr. Patel's Bill was referred to a Select Committee as suggested by Sir William Vincent but the Select Committee was of the view that as the reforms were about to be announc-

ed, and the constitution of the Imperial Legislative Council revised, it would be better if this measure was re-introduced in the next Legislature.

Thus it was that the Special Marriages Bill (to amend Act III of 1872) was presented in the first Legislative Assembly constituted in 1921 under the Government of India Act, 1919.

This Bill was again referred to a Select Committee and taken into consideration along with certain changes, made by the Select Committee, restricting the scope of the Bill. The Bill was finally passed by a vote of 37 in favour and 27 against.

Mr. Jinnah's speech on the Bill follows:

My Lord, it is certainly an irony of fate that my friend Mr. Surendra Nath Bannerjee, who has been agitating for the last 40 years and more, should be so much afraid of agitation and unrest. Is the circulation of this Bill going to cause unrest? What will the people understand by it? The Government attitude is perfectly clear. The Home Member, on behalf of the Government, says we seek opinions. Why should that cause unrest and anxiety to anybody, I fail to understand. Then the next point of Mr. Bannerjee was that this Bill will be considered better in the new Councils where the Government will be a responsible Government. Is this Government not a responsible Government now? I see no reason why this Government should not consider this Bill at this moment, if there is a case made out for it. Is there no duty or obligation lying on this Government as it is at present constituted? Are we to wait until another or new Council is formed which, in the opinion of Mr. Surendra Nath Bannerjee, will be a responsible Government? I certainly fail to understand that argument. I can quite understand my friend Mr. Sastri who said that we might wait until the new Council is formed. But may I say to my friend Mr. Sastri that this Bill will take a considerable time in order to ascertain the opinions of the various sections of the community, and is it not desirable that we should at least proceed with the work of receiving and collecting that body of opinion? When that opinion is collected, probably we will, and I for one hope that we will have the new Councils fully inaugurated and instituted. Then let the new Council deal with this Bill if necessary. But I see no reason whatsoever, why we should delay even the circulation of the Bill and collection of opinions until the new Councils are formed.

Personally, my Lord, I would like to go much further than this Bill. I was one of the supporters of Mr. Basu's Bill, and I then emphatically dissented from the attitude that was taken up by Sir Reginald Caraddock, the Home

Member at that time, who laid down two propositions and said that, unless those two propositions were complied with, the Government could not possibly give their assent to any measure of this character. One was that there should be an overwhelming majority in favour of the Bill, and the other was that if there was something like an outrage upon humanity, then the Government would be obliged to step in and prevent that by legislation. But, my Lord, there is a third proposition, and I ask the Government and those who are responsible for the Government of India today to read what Mr. Curtis has said on this subject. Mr. Curtis, in his 'Letters to the People of India', has dealt with this question in a manner which will commend itself to anybody who is really interested in this question. I do not want to quote that because I have not got the book here, but I would urge upon every Member of the Government to bear in mind those observations and principles which he has laid down, and I say it is incumbent, it is absolutely obligatory, on the Government to grant that liberty of conscience to individuals. Even on the ground of equity and fairness, let those who wish to contract marriages unfettered by the shackles of caste or any other shackles, do so. It is not obligatory under this Bill that every Brahmin should marry a Shudra, nor is it necessary that every Shudra should marry a Brahmin. This is purely permissive. What does this Bill say? It says that if a Brahmin wishes to marry a Shudra, and if a Shudra is willing to marry a Brahmin, let them do so. Why should they be prevented and why should their union be invalid? It is then open to the Brahmin community or the Shudra community, if they object to any member of their caste marrying outside their caste, to outcaste him or her if they like. But why should you, because the majority do not approve of it, not legalize his marriage into another caste. The argument is that until you get a majority, you should not do it. Now, I ask the Government—I do not ask those who advocate the principle that until you get a majority you should not do it—but I ask the Government face to face, if you are going to be guided in the matter only when you get a majority, how many years will you have to wait for it? And is the Government going to stand by and allow the majority

to oppress the minority? And remember that this minority is the creation more of the Western education for which you yourselves are responsible. Are you going to deny liberty to those whom you have educated? Are you going to deny liberty to those whom you have trained up in Western ideas, and are they to remain the victims of this caste shackle? I am a Mussalman. This is a question which I know concerns the Hindus, but as a Member of this Council I have to record my vote, and I cannot simply sit quiet and record it one way or the other. I am as much interested, my Lord, in coming to the rescue of the Hindu minority suffering today because of this law as anybody else would be interested in coming to the rescue of a Mussalman minority if it was suffering. Therefore, I strongly urge upon the Government to allow this Bill to go out to the country and let us collect opinions upon it.

IV

REFORM PROPOSALS

"It can only be a federation of India, and in a country so vast, with such a population as we have, I firmly believe that it will be necessary to have a revising chamber."—Jinnah

The First World War generated new compulsions on the British rulers to enlarge the Indians' participation in the government of the country. In the middle of 1918 the proposals which eventually took the shape of the Government of India Act of 1919 were announced. Though these proposals represented an advance on the existing constitutional formula of 1909, the progressive Indian opinion felt that they did not go far enough. This was the subject of the debate that was raised by Mr. Surendra Nath Bannerjee's Resolution moved in the Indian Legislative Council on the 6th of September, 1918. The Resolution was:

> "The Council, while thanking His Excellency the Viceroy aid the Secretary of State for India for the Reforms proposals, and recognising them as a genuine effort and a definite advance towards the progressive realisation of responsible government in India, recommends to the Governor-General in Council that a Committee consisting of all the non-official Members of this Council be appointed to consider the Reforms Report and make recommendations to the Government of India."

Mr. Bannerjee explained that he wanted the Committee to consist of the non-official Members only, because the Report was an official document and the officials had had their

say. Now it was for the public to examine the Report through their representatives in the Council.

He analysed the various proposals of the Report to prove that a distinct advance upon the then existing constitutional framework had been made. He was, however, critical of the recommendations concerning the Central Government.

The Resolution was supported by Sir Gangadhar Chitnavis, Sir Fazulbhoy Currimbhoy, Raja Sir Rampal Singh, Raja of Kanika, Mr. Asad Ali, Rai Sita Nath, Rai Bahadur B. D. Shukul, Sardar Sundar Singh Majithia and Sir Manindra Chandra Nandi. Mr. Asad Ali said the Muslims were disappointed as their community had not been given adequate representation. Mr. Malcolm Hogg and Mr. Ironside, representatives of the Europeans, expressed their disapproval of the Resolution. They thought no useful result could be obtained from a Committee as its members would hold divergent views.

Mr. G. S. Khaparde supported the operative part of the Resolution but disagreed with the view that "a definite advance towards the progressive realisation of responsible government in India" had taken place. He did not subscribe to the view that constitutional advance should first begin in the provinces and then at the Centre.

Mr. Kamini Kumar Chanda endorsed Mr. Khaparde's views. Mr. Abdur Rahim supported the first part of the Resolution but did not agree with the second. Pandit Madan Mohan Malaviya also said that the proposals did not go far enough. He said the Government only wanted to know the sentiments of the people, as a whole, towards the proposals of constitutional reform. The Special Indian National Congress and the All-India Muslim League had held their sittings in Bombay, and both had come to a unanimous conclusion. They had both clearly recognised the value of the recommendations and also pointed out where those recommendations had failed. He hoped their suggestions would be respected and the final scheme would contain an element of real progress towards self-government.

Mr. V. J. Patel regretted that he was not able to support

the Resolution in the form in which it had appeared. Disputing the claim that the proposed reforms constituted a definite advance, he referred to the joint deliberations of the Congress and the Muslim League in Bombay, a week earlier, at which the Reforms, taken as a whole, had been described as disappointing and unsatisfactory. He said that the main object of the Resolution was the appointment of a Committee; as such it was not proper for the Council to declare that the Reforms constituted a step forward. That should have been left to the Committee to decide. Mr. Patel suggested that the two parts of the Resolution be put to vote separately.

Mr. Srinivasa Sastri supported the Resolution and devoted most of his speech to personal references to the earlier speakers and the quarrel between the Indian National Congress and those who had seceded from it.

Mr. K. V. Rangaswamy Ayyangar criticised the Reforms proposals but considered the Resolution to be of an extraordinary character and impracticable. In his view, the Resolution even if it was carried, would not have any binding authority, and the Members could better express their opinions outside the Council.

Eventually the President of the Assembly divided the Resolution into two parts, the first thanking the Viceroy and the Secretary of State and recognising the Reforms proposals as a definite advance, and the second calling for the formation of a Committee of the Council Members. Both parts were adopted but Mr. Jinnah did not vote on either of the parts.

Mr. Jinnah's speech on the Resolution, which follows, shows his singular independence of mind.

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My Lord, I regret very much that my friend Mr. Sastri should have struck an unpleasant note as to the differences between him and Mr. Patel. I think this is not the place where we can defend, justify or impeach the position of the seceders from the Congress. The question before us is the Resolution. My Lord, in the first place, I have no hesitation in saying that we appreciate that there has been an earnest attempt on the part of Your Excellency and Mr. Montagu, the Secretary of State for India, to inaugurate a system of responsible government in this country....

THE PRESIDENT: I am sure the Council are very anxious to hear the Hon'ble Member; perhaps he will speak up a little louder.

MR. M. A. JINNAH: I am sorry, my Lord. I will repeat what I said, that I have no hesitation in saying that we appreciate the earnest attempt on the part of Your Excellency and the Secretary of State, Mr. Montagu, to inaugurate a system of responsible government in this country. Secondly, I think, my Lord, that it did not require the eloquence of my friend Mr. Bannerjee, nor the abilities of Mr. Sastri, to impress upon this Council, or upon anybody outside this Council who has taken the trouble to read the Report carefully, to come to the conclusion that there is a distinct advance on the present system of the Constitution of the Government. But that is not the question. We recognise that there is an advance, but that is not the question. Nobody disputes that responsible government is to be established in India by successive stages, or, in other words, there is going to be a progressive realisation of responsible government. That undoubtedly implies instalments and stages, but, my Lord, as your Lordship said in your speech only a few days ago, what was promised in that announcement was 'a substantial step'. If I may quote it, my Lord, this is how your Lordship put it:

"What I wish to emphasize is this. 'Substantial steps'

> were promised. In my own heart I am confident that 'substantial steps' are provided in our proposals. We have not kept back something like hucksterers in the market, something which we would be prepared to give as a result of pressure. Everything has been placed on the table for all men to see."

Now, my Lord, with the utmost deference, with the utmost respect for Your Excellency's opinion, I beg to submit that 'a substantial step' has not been given in these proposals, and I shall illustrate what I mean at once. In the Provincial Governments, my Lord, undoubtedly there is an advance, but what do we find? We find this, that whether we really get a substantial step in the Provinces or whether we do not, will depend entirely on the Committee which will decide the Transferred and the Reserved Subjects, and eventually whether those recommendations will be accepted or not. Now, I say, my Lord, without going into details, because I have limited time, 15 minutes under the rules, that there are Provinces in India today which are quite competent to manage the entire Provincial Government. But without going into reasons, what we say is this, as you are trying an experiment, and since you say that we are going through transitional stages, we are prepared, while not agreeing with the reasons given in the Report, but as a matter of compromise, that in some Provinces all subjects should be transferred at once, except the police and justice; and they are quite competent, I make bold to say, to manage them.

Then again with regard to the Provinces, there is a feature in the proposals, which to my mind is a most objectionable feature, and that, my Lord, you will find in clause 43 of the Report. Even assuming, my Lord, that the proposals were accepted and that substantial departments or subjects were transferred under clause 43, such enormous powers are given to the Governor that, in my opinion, it will be injurious and prejudicial to the objects in view. Now, see what the Governor can do under clause 43?....

SIR GEORGE LOWNDES: My Lord, I think the

Hon'ble Member is wrong; clause 43 of the Report deals with Baluchistan and the North-West Frontier Province.

THE PRESIDENT: I think the Hon'ble Member is referring to clause 43 in the Summary. I think it would be more convenient if he referred to the Report because we laid particular stress on the fact that the Summary was not to be regarded as in any way authoritative. It is the Report which is the authoritative statement.

MR. M. A. JINNAH: My Lord, my point is one that does not require any reference to the paragraphs; it is this, that any Member of the Executive Council is to have the right to challenge the whole or any part of a Bill on its introduction, or any amendment when moved, when he thinks it entrenches on the reserved field of legislation. The Governor is to have the choice then, either of allowing the Bill to proceed in the Legislative Council, or of certifying the Bill, clause, or amendment. If he certifies the Bill, clause, or amendment, the Governor may either decline to allow it to be discussed, or suggest to the Legislative Council an amended Bill or clause, and so on. Therefore, my Lord, any Member of the Executive Council can get up and say that a particular Bill or clause in that Bill impinges or entrenches on a Reserved Subject, and the Governor in his full discretion can decline to have the Bill discussed, or allow any clause of it to be discussed. That, to my mind, is a most objectionable feature so far as the Provincial Governments are concerned and should not be allowed.

Then, my Lord, going further into details, I do not accept the proposition that, in order to achieve progressive realisation of responsible government, you must confine the advance such as is foreshadowed to the Provinces. Where do you find that in the announcement of the 20th of August? Why must you confine it to the Provinces, and why should the Government of India be left untouched? And yet this is how the formula is laid down by the authors of the Report. My Lord, with very great respect I must say again that I see no justification in the announcement to say that the Provinces should form the units, and that for the present we must confine ourselves to the progressive realisation of responsible government in the Provinces. The posi-

tion of the Government of India under the proposals will be as defined in formula 3 of the Report. I will read it.

> 'The Government of India must remain wholly responsible to Parliament and saving such responsibility, its authority, in essential matters, must remain indisputable, pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased.'

Therefore, so far as the Government of India is concerned, you leave the Government of India in this position. That we, the elected Members in the Government of India, shall have nothing else but 'opportunities of influencing the Government'. We have been influencing the Government since 1892, we have been influencing the Government since 1909, (the Minto-Morley Reforms), and you are leaving us in the position that has obtained ever since 1892. What difference is there? Of course, I shall be told that we have an elected majority; I shall be told that, so far as a private Member's Bill is concerned, we can carry it through the Assembly, and take it to the State Council, and in case of differences of opinion between the Chambers, it will be settled by means of 'Joint Session'. Here, again, the Governor-General in Council will have the power to certify and that means that the certificate will prevail against the will of the representatives. Now, my Lord, this is the very thing you deprecate in your Report, namely, that which you call the bane of the Minto-Morley Reforms. And what is that bane? It is that you leave the elected Members in the position of irresponsible critics. How are you changing that position by this scheme of yours? They will remain irresponsible critics under this Constitution, because by the certificate of the Governor-General in Council, you can do as you please. You can carry any measure that you desire, notwithstanding the unanimous opposition of the Assembly or the elected Members in the Council of State. Is that so, or is that not so? If that is so, do we not remain in the same position of irresponsible critics? You will find under your scheme that a

Government Bill can be run through on a certificate. You will also find that on a certificate even a private Member's Bill can be thrown out or altered as the Government wish. But over and above that, you have got the veto as far as a private Member's Bill is concerned.

Now, my Lord, may I know why the Government of India is to remain so sacred and not to be touched? Is there no department in the Government of India which could be brought under the control of the vote of the Legislature, and why not? Why, I ask, should there not be simultaneous advance? I am prepared, my Lord, to concede this proposition, for the present, that the Government of India are certainly responsible for the peace, order and the safety of the country. I am prepared to concede this also, that they should keep under their own control those departments which are essential for the carrying out of the primary functions of the Government. But, my Lord, is there no department in the Government of India which ought to be brought under the control of the vote of the Legislature? My Lord, in the first instance, my submission is, that barring the Reserved Subjects, in which I include the peace, tranquility and safety of the country, other departments should be left to the vote of the Legislature. I am prepared to accept and I do accept the bicameral system which is laid down in the Report, and I hope that the day may come, as the distinguished authors of the Report themselves say, when it will become the real revising chamber. I have no doubt, my Lord, that 'responsible government' in this country is bound to come, it must come. It is only a question of time. At present the difference between you and us is a question of speed; there is no other question. We say that your proposals do not go far enough. You want to proceed slowly; we want to go faster. But I say, my Lord, whenever that day does come, it can only be a federation of India, and in a country so vast, with such a population as we have, I firmly believe that it will be necessary to have a revising chamber.

Now, what will hapen, my Lord, if my suggestions are accepted? Shortly put, in the case of the Reserved Subjects you will have complete administrative control, and with regard to affirmative legislation, you can run through any

measure, whereas Transferred subjects will come under the vote of the Legislature. Remember, you have the Council of State; if there is a difference of opinion between the two Houses, you have at once a 'Joint Session'. My Lord, I have carefully worked out the figures and have taken a little trouble to think over the problem. What will be the position? Will the position be so rash, so irresponsible, if you leave certain departments to the vote of the Legislature? Certainly not, because to begin with, you have out of the 100 Members in the Assembly, 67 elected, and you have 21 elected, in the State Council. In the Joint Sessions there will be a majority of 26 elected Members, and without meaning any offence to anybody, even among the elected Members, sometimes, my Lord, there are differences of opinion; and out of those 26 I deduct 14, some of them representing special interests; the European Members, I do not count. Therefore, in the Joint Sessions you will have a majority really of 12 elected Members. If those 12 Members, my Lord, cannot be won over by the Government of India with regard to the departments which do not touch the primary functions of the Government, namely, peace, tranquility and safety of the country and Reserved Subjects such as Army, Navy, Foreign, Police, and ruling princes, and if the vote decides against the Government, in matters other than Reserved Subjects, then I say, my Lord, that it should be so, and the will of the Legislature should prevail over the Executive in those matters at least....

THE PRESIDENT: The Hon'ble Member has exceeded his time-limit.

MR. M. A. JINNAH: My Lord, I have nothing more to say except this, that for the sake of the glorious day which will form the brightest chapter in the history of Great Britain and of India, namely, the day when responsible government is established in this country, might you not view the question of present in a generous and large spirit, and might we not hope that, notwithstanding your expression of opinion, you will still be prepared to consider the suggestions and modifications that we propose which will give satisfaction to the people and make the experiment a real success.

V

ROLE OF THE PRESS

"Protect those journalists who are doing their duty and who are serving both the public and the Government by criticising the Government freely, independently, honestly—which is an education for any Government."—Jinnah

In September, 1918, the Central Legislature of India was moved to set up an enquiry into the working of the Press, the object being a study of the arbitrary nature of the Press legislation and its stifling effects on public opinion. The move came in the form of an innocuous Resolution tabled by Mr. G. S. Khaparde, which said:

> 'This Council recommends to the Governor-General in Council that a Committee consisting of an equal number of officials and non-official Indians be appointed to inquire into and report on
>
> (a) the effect produced on the Press in India by the legislation relating to it, and by the Defence of India (Consolidation) Rules, 1915; and
>
> (b) the moral and material conditions of the Press in India.'

Speaking on his Resolution, Mr. Khaparde said the need for an inquiry had arisen because many people had expressed the view that the Press legislation was extremely stringent. He cited a judicial pronouncement by Sir Lawrence Jenkins, who had said the best literature could fall under the mischief of this legislation. But in his keenness not to annoy the British rulers, he insisted that he was not asking for any remedial

steps, only for an inquiry. The moral condition of the Press meant, he explained, the psychology of the editor and the people who wrote. If they were writing continually under the threat of being taken up, or of their presses being closed, or of their proprietors and their employees being punished, then their writings were bound to be bitter and, consequently, the public opinion would get very bitter. One of the Members, Lt. Col. S. L. Aplin (from Burma), opposed the Resolution on the plea that if an inquiry Committee was set up, it would create the impression that, "in the opinion of the Government of India, there were grounds at least for supposing either that the powers conferred by the existing legislation were unnecessary, or that they were being exercised without due prudence and discretion." Any such impression, in his opinion, would inevitably weaken executive authority, which was an undesirable result at any time, but especially so when the Empire was at war.

The Resolution was supported by Mr. Surendra Nath Bannerjee who said he had been a Pressman for 40 years and he wished to associate himself heartily with the Resolution subject to one reservation. He protested against the attempt of the Mover to institute an inquiry into "my moral condition and of Pressmen like myself".

Speaking on behalf of the Government, the Home Member, Sir William Vincent, opposed the Resolution and said that the institution of the inquiry would give rise to the ill-founded impression that there was some flaw in the working of the Press legislation. He pointed out that barely 18 months earlier a deputation had waited on the Viceroy to demand repeal of the Press Act and the Viceroy had expressed his inability to comply with that request. He did not think that there had been any substantial change in the attitude of the Press since that deputation to the Viceroy, that there had been any improvement in the tone, or that the case for modifying the law had in any way been strengthened. He maintained that the legislation was not used to unfairly penalise the Papers and the presses. Action had been taken only in

extreme cases against deliberate attacks intended to undermine the authority of the Government of India. Sir William, however, took the opportunity provided by the second part of the Resolution to castigate the Press for a tendency to make "unfair and irresponsible attacks on Government and even on Honourable Members of this Council from time to time, the substitution of mud-flinging for argument, a general want of temperance and charity", but he could not see how an inquiry would do away with these defects.

Mr. Srinivasa Sastri referred to the Home Member's remarks that there had been no change in the tone of the Press since the Viceroy had declined to repeal the Act. The inference to be drawn from that was not that a relaxation of the Press law was not justified but, on the other hand, the inference that should be drawn was that such measures defeated their own purposes. Giving examples of the suppression of the Press by the Government, he mentioned that the Provincial Government of Burma had banned the entry of a paper like "The Hindu" under the Post Office Act. Even the "Indian Review", which was edited and conducted "by one of the sturdiest moderates in the country, a paper in which officials were proud to write, a paper which the Government of Madras had from time to time patronised," was also kept out of Burma.

The Resolution was also supported by Dr. Tej Bahadur Sapru but he agreed with Mr. Bannerjee that an inquiry into the moral and material conditions of the Press was not desirable. Mr. Jinnah made his speech at this stage.

Mr. Jinnah was followed by Sir Gangadhar Chitnavis, who spoke in favour of an inquiry but wanted the Committee to be set up after the war. Rao Bahadur B. N. Sarma supported the Resolution. The Resolution was opposed by Mr. J. P. Thompson whose long-winded speech was brought to an end only after Mr. Jinnah intervened on a point of order.

When Mr. Khaparde had made his closing speech and

the Home Member had replied to it, Mr. Jinnah suggested that the Resolution be divided into two parts and put separately, unless the Mover withdrew the second part of his Resolution. Mr. Khaparde withdrew the second part. The first part of the Resolution was then put to vote. It was defeated by 37 votes to 15, Mr. Jinnah voting in its favour.

Mr. Jinnah spoke in support of first part of the Resolution:

Sir, when the Press Act was passed in 1910, I happened to be a Member of this Council. At that time the position, Sir, was this—I think the Hon'ble the Home Member will bear me out—that we had got already sufficient provisions in our ordinary Codes and our ordinary laws, to deal adequately with most of the offences which he described in his speech, but that could only be done by means of judicial proceedings.

It was then suggested in 1910 that we had so many instances of papers which I will characterise as erring papers, papers which spread sedition and disaffection, and were the cause more or less of political crimes, that those papers could not well and adequately be dealt with by the weapons which already existed in the armoury of the law. Therefore, the Government came before this Council and put forward this case, that the Council must give power to the Executive to deal with such offences, because it was urged that the consequences of adopting judicial proceedings were sometimes worse in their result, although it could secure a conviction against the culprit. It was in view of these facts, and particularly because at that time the province of Bengal was not very peaceful, that the Government in 1910 came before this Council and asked for these powers. Sir, if you will refer to the proceedings of 1910, you will find that almost every non-official Member, feeling as he did that the Press Act was striking a blow at the liberty of the Press which we all prize, still came to the conclusion that, having regard to the circumstances, he could not refuse them; and you will find that almost all non-official Members supported the Act, with the exception of one or two. This was in 1910.

Sir, this Act has the defect of all measures which do not come under the purview of judicial supervision; because it is a measure which has got to be administered by the Executive. This measure has remained on the Statute-book for seven years, and I venture to say that, notwithstanding the extreme instances the Hon'ble the Home Member was pleased to cite, there are cases where this Act has

been maladministered and has been oppressively worked. It is no use citing instances of an extreme character. We know all that, and we regret it. It was because of these extreme cases that the Government were in a position to come before this Council and ask for these extraordinary powers which you have got at present. We regret them and we unwillingly gave you that power. But the question today is this—How has that power been exercised, and how is this Act to be administered? I do not want to go into details. I could give some instances that have come to my knowledge, and I have no hesitation in saying that the Act has been administered in a most arbitrary manner; and you cannot prevent it, you cannot avoid it, because you must remember that we are all human; and when such arbitrary powers are given to Heads of Departments and to Executive Officers, it must be remembered that they are human, they have got likes and dislikes, and they have their prejudices. And remember this, that there is no appeal, it is final. Now what we want is this. Seven years have passed since this Act became law, and we feel that it is time that a proper inquiry was held; and if you hold the inquiry, Sir, I venture to say that the Government themselves in all fairness will be satisfied that this Act should be modified. I do not wish for a single moment that any culprit who is guilty of sedition, who is guilty of causing disaffection, who is guilty of causing race hatred, should escape; but at the same time, I say, protect the innocent, protect those journalists who are doing their duty and who are serving both the public and the Government by criticising the Government freely, independently, honestly—which is an education for any Government. I know that officials are sensitive to criticism; and we have a very typical example in my Hon'ble friend Colonel Aplin. He is mortally afraid of any criticism going to Burma. Well, I hope that Colonel Aplin will bear in mind some of the remarks that the Hon'ble Mr. Sastri made with regard to that. You are not going to make the people of Burma happy by keeping them ignorant. It may be easier to govern them that way, but it is not a model form of government, and even Burma might make some advance.

I therefore entirely support the first part of the Resolution.

VI

DEMAND FOR DOMINION STATUS

"We come back with that mandate of the electorates, who are the real masters, after all—and we want them to be real masters because without them no scheme is worth the paper on which it is written."—Jinnah.

The Constitutional arrangement embodied in the Government of India Act, 1919, did not satisfy the political aspirations of the Indian people. This became manifest during the tenure of the very first Legislative Assembly formed under the new Act, when Indian Members repeatedly pressed the British to grant the people of the country a greater share in government. In view of the growing political consciousness of the people, the Indian leaders felt confident in pitching their demands ever higher. They were never content with the limited rights granted to the Provincial Governments and were particularly critical of the scheme of keeping the Government of India outside the Legislature's scope of influence. By early twenties the demand for Dominion status had begun to be pressed seriously. When the second Legislative Assembly, constituted under the Act of 1919, met for the first time in 1924, the first Private Resolution to be moved in the House was on this subject.

The Resolution, moved by Diwan Bahadur T. Rangachariar, which was discusssed on February 8, 1924, ran as follows:

"This Assembly recommends to the Governor-General in Council that he be pleased to take at a very early date, the necessary steps (including if necessary, procuring the appointment of a Royal Commission)

> for revising the Government of India Act so as to secure for India self-governing Dominion status within the British Empire and Provincial autonomy in the Provinces."

The President, Sir Frederick Whyte, dealt with the question of the amendments at the outset. According to him, the first amendment of real substance stood in the name of Pandit Motilal Nehru and the President proposed to call upon him to move it at an early stage of the debate. Dr. H. S. Gour had tabled an amendment to Pandit Motilal Nehru's amendment and, therefore, his original amendment was not to be moved. Mr. Jinnah had also given notice of an amendment but the President said that in so far as Mr. Jinnah had proposed a Committee rather than a Round-Table Conference, it was already covered by the amendment of Pandit Motilal Nehru. Mr. Jinnah did not contest the ruling.

Speaking on his Resolution, Mr. Rangachariar described the political atmosphere prevalent as conducive to a discussion on the important issue raised by him. He said:

"......By that one very just, wise and generous act of statesmanship on the part of Lord Reading's Government in releasing that great man, that great friend of the English Government, Mr. Gandhi, Sir, the Government have created an atmosphere for full and free discussion of this most important Resolution......and I hope, Sir, that, with the advent of the new Labour Government in England, good days are in store for India, good days are in store for the Empire. For, without India what is the Empire?"

He said the object in enforcing the 1919 Constitution had been to get a government with the consent and co-operation of the people. The new system had been tried wholeheartedly for three years and on the basis of this experience he could say without any hesitation that the system was absolutely defective so far as the Central Government was concerned.

He maintained that if the Indians were fit for responsible government at any stage, they were fit at that time for full

responsible government. He said that through the Resolution, an early revision of the Government of India Act was stipulated, and the object of that revision was to secure full responsible government and he did not want to be misunderstood on that score:

"......I want Dominion status abroad and responsible government within, that is, the right to manage our own affairs, our internal affairs inside the country. That is what the people want..."

Explaining the Government's reaction to the Resolution, the Home Member made a lengthy speech and in the words of Mr. Jinnah performed 'constitutional gymnastics', by trying to draw a fine distinction between Dominion status and full responsible government. He said that the object of the Act of 1919 was the establishment of responsible government and that the Act maintained the necessity of the realisation of that ideal by stages. In the opinion of the Government, the first stage of the transition had not been sufficiently tested. He said the Government of India would investigate the justifiable complaints against the working of the Act and see what remedies, within the Act, could be applied. Claiming that the various Indian leaders had expressed their satisfaction with the scheme of constitutional reforms envisaged by the Government of India Act, 1919, he quoted from Mr. Jinnah's evidence, on behalf of the Muslim League, before the Joint Parliamentary Committee in 1919. According to him, there was not even a word in Mr. Jinnah's evidence about immediate responsible self-government or full Dominion status. Mr. Jinnah had wanted advance in the Central Government, but he wanted it by means of dyarchy, he said, and had accepted the ten-year Statutory Committee.

After the Home Member's speech, Pandit Motilal Nehru introduced his amendment:

"That the following be substituted for the original Resolution:

'This Assembly recommends to the Governor-General in

Council to take steps to have the Government of India Act revised with a view to establish full responsible government in India and for the said purpose:

(a) to summon, at an early date, a representative Round-Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a Constitution for India; and

(b) after dissolving the Central Legislature, to place the said scheme before a newly-elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a Statute."

Dr. H. S. Gour moved the following amendment to Pandit Motilal Nehru's amendment:

"That for Pandit Motilal Nehru's amendment, the following be substituted:

'This Assembly recommends to the Governor-General in Council to take steps to establish full responsible government in India and for the said purpose to summon at an early date a representative Convention, to prepare, with due regard to the protection of the rights and interests of important minorities, a Constitution for India, and submit the same to the British Parliament to be embodied in a Statue.' "

Speaking on his amendment, Dr. Gour said that Pandit Motilal Nehru's amendment envisaged several stages in the evolution of a new constitutional scheme which could delay India's advance.

After Mr. Jinnah had made his speech, the Resolution was supported by Mr. N. M. Dumasia and opposed by Mr. T. E. Moir and Sir Purshotamdas Thakurdas. Pandit Madan Mohan Malaviya spoke in support of Pandit Nehru's amend-

ment. When put to vote, Dr. Gour's amendment was defeated.

Pandit Motilal Nehru's amendment was also supported by Diwan Bahadur Ramachandra Rao, Mr. V. J. Patel, Mr. Chamanlal, Mr. T.C. Goswami and Mr. R. K. Shanmukham Chetty. Maulvi Muhammad Yakub also supported Pandit Nehru's amendment and while doing so, he took strong exception to the remarks made by three Muslim Members—Chowdhry Alimuzzaman (elected), Sahibzada Abdul Qayium (nominated), and Maulvi Abul Kasem (nominated)—who had given the impression that the Muslim community had some reservations about the demand for constitutional advance. He assured the House that "we, the Muhammadans are second to none in the effort to secure the freedom of our motherland. The unwisdom of those who withhold participation in the movement for concerted effort cannot be condemned in too strong a language." The Resolution was opposed by Sardar Bahadur Captain Hira Singh and B. A. Dalal—both nominated Members. Sir P. S. Sivaswamy Aiyer spoke in support of the Resolution.

Before Pandit Nehru's amendment and the Resolution were put to vote, the Home Member, Sir Malcolm Hailey, made a long speech which was interrupted on a number of occasions. Often, when he made a reference, or attributed something, to a Member, he rose immediately to challenge the Home Member. In an obvious reference to Mr. Jinnah's speech, the Home Member said: "Now, I pause for a moment here, because I have been told more than once that in claiming that this is the real issue, I was wrong, that there is no demand for immediate self-government, that I was fighting a bogey that I had myself created. I have Mr. Jinnah's assurance that I am wrong. It is possible that Mr. Jinnah himself, though for some reasons he seems to sympathise with those idealists who do ask for immediate self-government, does not ask for it himself. But, Sir, since when has Mr. Jinnah been the custodian of the conscience of the Swaraj Party?......"

Mr. Jinnah immediately got up to contest the Home Member's version, and said:

"I did not say that. I said that the amendment of Pandit

Motilal Nehru, worded as it is, does not ask for the establishment of immediate full self-government—it requires that immediate steps should be taken."

At a later stage of his speech, the Home Member again misrepresented Mr. Jinnah, when he remarked:

"......As I say, I will take a declaration from Mr. Jinnah that he does not mean an immediate demand for self-government. But I require greater certitude than that, if I am to accept the amendment at its face value."

Mr. Jinnah again protested, in these words:

"I have made no declaration, Sir, I do not wish to be misrepresented. I have made no declaration. All I say is that the words of Pandit Motilal Nehru's amendment are clear. It asks for immediate steps and not immediate establishment of full responsible government."

Referring to the question of allowing India to frame her Constitution independently, the Home Member said:

"I assert that there is nothing whatever either in political equity or in the history of the Dominions which justifies the claims that India should frame her own Constitution without any reference to Parliament other than the demand that it should at once be ratified."

At which Mr. Jinnah remarked, "Let us create one."

At the conclusion of the lengthy discussion, Pandit Motilal Nehru's amendment was adopted without a Division and Mr. Rangachariar's Resolution, as amended by Pandit Motilal Nehru's amendment, was passed by 76 votes to 48.

We now reproduce Mr. Jinnah's speech on the Resolution:

In the first instance, I should like to try and make the real issue before this House, as clear as possible. After hearing the speech of the Hon'ble the Mover and the Home Member, I cannot share the opinion of those who say that the answer of the Government is disappointing, and my reasons are these. Under Section 41 of the Government of India Act, 1919, it is laid down that a Commission shall be appointed at the end of ten years, but it does not preclude, therefore, those who are in authority, to institute an inquiry and appoint a Committee or a Commission earlier than ten years. Further, when Mr. Majumdar's Resolution was moved in this Assembly, two years ago, a formula was accepted unanimously by the Assembly itself. That formula expressly admitted that a Commission might be called earlier than ten years. I take it that, when the collective wisdom of that Assembly expressed that opinion, it must have expressed that opinion to reduce that period by at least two or three years, it cannot be a month or a week. Therefore, at any rate, the last Assembly, as it was constituted, expressed its opinion to that effect. Well, if you take three years, it will bring us to 1926. We are now in 1924, and today the Government have conceded, and I attach great importance to that, subject to the further remarks which I shall make later on, that they recognise the necessity of an immediate step being taken to examine, reconsider and revise the Government of India Act, 1919. I hope I understand the Home Member correctly. But he says that he will make a departmental inquiry. That is to say, if I understand the Home Member correctly, and unless I stand corrected, he concedes the necessity of a step being taken forthwith, or at an early date. He says that the character of that step will be this, that they will make a departmental inquiry, that is to say, the Government of India will consult Local Governments, or such persons as they may be advised, and they will formulate a scheme which they think proper. That scheme will then be submitted to the Secretary of State. After the despatches have gone backwards and forwards, the scheme will be placed before this

Legislature and then it will be submitted to Parliament. Now, Sir, I recognise the first step, but I must say that I cannot agree in this matter with the character of the procedure which was defined by the Home Member. Sir, just imagine, a scheme is to be formulated by a departmental inquiry which will, *ex-hypothesi,* be framed in the secret conclave and the secret chambers of the Executive. The Government of India will take those decisions of formulating the proposals. After those proposals are formulated, they will go again to the Secretary of State for India. They will again be considered and examined behind closed doors at the India Office; and, when definite proposals have been formulated and serious decisions have been arrived at, you will then present that scheme to the Legislature—with what chance of its being modified at that stage? I say it is an entirely wrong procedure to adopt. That is the fundamental difference between the Home Member and ourselves.

Now, Sir, I will not deal with the Resolution of Mr. Rangachariar, because I am in entire agreement with the amendment that is moved by Pandit Motilal Nehru. Now, let us see what that amendment says. That amendment, first of all, asks the Government that they should take steps to have the Government of India Act revised with a view to establish full responsible government in India, and for that purpose, etc. Well, I shall not go into the constitutional gymnastics which the Home Member performed, by his fine distinction between Dominion status and full responsible government. I fail to understand exactly what is the distinction; it all depends how you define full responsible government. But, as I say, we are not concerned at the present with those highly technical constitutional questions; it is quite sufficient for my purpose, and I shall point out for the moment to the Home Member, as he was good enough to quote from the opinions of some of the public men, that he quoted me only partially, and he forgot that the answer quoted by him was given to a particular question. But I am sure that if he has read my evidence, he will, I think, have found that that very question as to what we mean by responsible

government is answered by me and was the very first question that was put, and this is what I happened to say. I hope the House will excuse me for quoting from my own answer to the question, but I do so because the Home Member has quoted only part of it. This is what I said. The question was as follows:

> 'Do you accept that it is desirable to bring about the progressive realisation of responsible government in India, and if so, how do you define the expression 'responsible government', and do you generally accept the proposition contained in the preamble?'

The answer I gave was as follows:

> 'The proposition, that it is desirable to bring about the progressive realisation of responsible government in India, is sound.'

That is my answer. Then I go further and say as follows:

> 'But a substantial step must be taken at once. We would define the expression 'responsible government' as far as we can define it, that the will of the Legislature, which is responsible to the electorates, must prevail over the Executive, subject to veto.'

Now, I ask the Home Member, what difference is there —perhaps he might claim to be a great constitutionalist and would enlighten us—what difference is there between full Dominion status and the definition given by me of true responsible government? Therefore, Sir, it is irrelevant and beside the point really for our present purpose to go into these matters.

What do we suggest in our amendment?

> 'This Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full res-

ponsible government in India and for the said purpose, etc...'

Here, Sir, I pause for a single moment. The Hon'ble Member, with his usual ability has tried to run away from the issue. First of all, he set up a bogey of the immediate grant of full Dominion status. That is the first bogey he set up. It is not there, excuse me. I shall explain, and I am surprised that the Hon'ble Member has not been able to understand it. Remember, says he, we have the question of Hindus and Muhammadans not united. Remember, we have got large commercial interests; European interests. Remember that your army now consists of the fighting classes. Remember that and further remember that your own public men, when they gave evidence before the Joint Parliamentary Committee, and the Indian National Congress never asked for such a thing as that. Remember the position of the ruling princes. Sir, I can only tell the Home Member that all that energy was wasted for nothing. If he will carefully read that amendment, he will see that it is not a demand for immediate, full responsible government. But, it wants you to take immediate steps—I will repeat that—immediate steps are required. I recognise freely, frankly, that the Home Member's speech does convey to the House, that they will take steps. Now, we come to the steps. What steps? I have described the steps the Hon'ble the Home Member proposes to take. What steps do we suggest? The steps that we suggest are these, and I say, Sir, that these are the finest steps that the Government could possibly be advised to take. If your purpose is high, as the Home Member said your purpose is really to look to, and think of, the welfare of India, if you really want the best of India to go with you, this is the best possible method for you to adopt, because, after all, you want confidence, support and co-operation from the best of India. We say to you that the finest method that you can adopt, for that purpose, is to summon a Round-Table Conference of representative men to frame a scheme in consultation with you, not without you. What objection do you have to that? Why is it wrong? Why do you want to sit behind closed doors, in the secret

chambers of the Executive? Why do you want to carry on your despatches backwards and forwards behind our back? Why do you want to take this decision and formulate these proposals and then come to us with all sorts of excuses and say that now this is very difficult to deal with. Sir, the proposal of yours is putting the cart before the horse. We want you to take the people with you. We want you to start in a manner which will carry the support of the people with you. What objection can you have to a Round-Table Conference of representative men for this purpose? Further, we give you a far greater security and far more real sanction and approval of the scheme that this Round-Table Conference may formulate. And what is that? Sir, the Round-Table Conference will consist of representative men. No doubt these people will carry the greatest influence with the people. On the other hand, we shall have the Government and we may have experts, who are entitled to speak on constitutional matters. But, even when you have that, we give you a far more convincing proof so as to make you feel that we have, once for all, settled this question in such a manner that it will carry the support, the confidence and the co-operation of the people. And for that purpose we suggest that, when a scheme is framed by this Round-Table Conference, dissolve this Assembly—the Central Legislature. Let that scheme go out to the country and let us vacate these seats. Of course, you will draw your pay just the same. It does not matter to you. But we shall have to spend more money in electioneering. We shall have to spend some thousands of Rupees by going from place to place, begging each voter if he will vote for us or not. Sir, we shall be more out of pocket and shall undergo the trouble and inconvenience of which you have no idea and no experience. We shall then have to convince the electorates, which you have created under the Government of India Act. And, if we come back with that mandate of the electorates, who are the real masters, after all—and we want them to be real masters because without them no scheme is worth the paper on which it is written—then we shall say that we are in a position to give our sanction which shall be lasting, which will give you all the support

you require. Any government that is formed will not be a government run as it is today by a minority and supported by a Section of the Statute which gives it the power to certify in place of the majority. This is what we want. Now, what objection can you have to that? What is wrong about it? Sir, the Hon'ble Sir Malcolm Hailey, the Home Member, quoted a passage from my evidence, although it was in answer to a particular question, but I take complete responsibility for it. It was as follows:

> 'We have no other method to suggest. Dyarchy fits in more with the order of things as they exist at present in India and it can be justified on the ground that it is for a transitional period.'

The Hon'ble Sir Malcolm Hailey did not tell the House that the crux of my evidence before the Joint Committee was this: that at the present moment I am inclined to think that dyarchy is the best possible system that you can introduce. But, Sir, my proposal was that there should be dyarchy in the Central Government also. It was on that footing that this answer was given. Further, the Hon'ble Member, then, was a Commissioner in a district. Since then, he has become the Home Member, and has been designated Governor of a Province. A great deal of water has run down the Thames since then. We were in 1919 considering a question, or rather a Constitution of far-reaching importance dealing with a vast population of a country like India. Is an opinion given at that time to be an opinion to last for all time? We have realised, Sir, and I have very little doubt about it in my mind, that dyarchy has failed, and I believe I am not the only one who thinks so. I believe even those men who faithfully and loyally worked the Reforms, men who were wedded to these Reforms, say so. Take the case of Mr. Chintamani. What does he say? He was one of the stalwarts amongst the supporters of these Reforms. Therefore, Sir, it is no use merely getting hold of a few words and quoting them. I thought the Hon'ble the Home Member would have

something better to advance than to pick up a sentence here and a sentence there, and say you said this in 1918, or in 1919. Sir, I do not wish to waste the time of this House, but I do submit this, and I say to the House, that the simple issue before the House tonight is this: What is going to be the character of the step? That is the simple issue. We have heard the Hon'ble the Home Member. I absolutely and entirely oppose the character of the step that he has described, and I, therefore, ask the House to vote in favour of the character of the step that we suggest, until something better is suggested. I am not satisfied with the step which is suggested by the Home Member. I hope I have not exceeded my time, but I wish to say this with regard to Dr. Gour. I speak with very great respect, and I say this. I really fail to see how his amendment is going to prevent the Government from doing what he said, or attributed, the Government might do. He has suggested a Convention. On what footing will that Convention be called? What will be the qualification of those who will be the members of that Convention? Who will decide this question? I cannot really understand how that is going to prevent the Government, if they wish to procrastinate or delay the matter, from doing so. But, I am not one of those who will, in season and out of season, attribute motives to Government. I accept the word of the Home Member when he says that they want to take steps. I accept that word and I am ready to take it that it is an honourable assurance that we accept, and it will be done without delay. I accept that and I am not going to start by saying, 'you will delay and you will frustrate.' We will see, but I submit to this House, that I really fail to understand Dr. Gour. Instead of saying 'Round-Table Conference,' he says, 'Convention.' 'Convention' has got some constitutional meaning, I understand. Otherwise, I do not see any difference between Convention and Round-Table Conference; but there is a constitutional difference, and I say it does not improve matters at all. On the contrary, it will make the position of the Government far more difficult to call a Convention, and it is likely to bring about far grea-

ter delay than a Round-Table Conference. Therefore, I strongly oppose his amendment.

With these words, Sir, I may say I am very glad that the tone and the attitude of the Home Member, speaking on behalf of the Government, has been very conciliatory. We appreciate that, we fully appreciate that; but I do press the Hon'ble the Home Member to accept our method of starting with that step.

VII

THE HORNIMAN CASE

> *"Sir, I am not one of those men who encourage any crime or any offence, but I do maintain, and I have drunk deep at the fountain of constitutional law, that the liberty of a man is the dearest thing in the law of any Constitution and it should not be taken away in this fashion".—Jinnah*

During the turmoil of 1918-19 the Government of India dealt with political dissidents and critics in the Press with extraordinary harshness. An independent British journalist, Mr. B. G. Horniman, was the editor of 'The Bombay Chronicle'. In 1919 he was deported to England on the charge of having written objectionable articles. The newspaper was later suppressed for a period. When Mr. Horniman tried to return to India, he was refused a passport. The case led to considerable agitation in India and England. In 1923 the matter was raised in the Indian Legislative Council, in the form of a Resolution moved by Mr. V. J. Patel.

Moving the Resolution, Mr. Patel said: "I shall read the Resolution which I have the honour to move:

> 'This Assembly recommends to the Governor-General in Council that steps be forthwith taken to remove all restrictions in the way of Mr. B. G. Horniman to return to India.'

"This is rather a simple Resolution and...I will not make any very lengthy comment in support of this Resolution.

"The question is, who is Mr. Horniman and why was he deported? I will read from a foreword written by Mrs. Besant to a book entitled 'Selections from the Speeches and writings of Mr. B. G. Horniman,' and dedicated without permission to the Indian Bureaucracy. Mrs. Besant says:

'Mr. B. G. Horniman, the author of the articles which

> are published in the present volume is one of those all few Englishmen who carry their British principles with them when they come to India and who keep them in the open air during the years of their stay in this land. The commonplaces of liberty of speech, liberty of the Press, liberty of person—unless deprived of it by the law—these, which in England are taken for granted as the inalienable rights of good citizens, are matters of grace in India, are held at the mercy of autocrats, little and big, white and brown, from the *Lat Sahib* enthroned in Simla, who issues letters *de cachet* down to the constable who takes toll of the coolie's basket and cuffs him if he complains. But to Mr. Horniman these Rights are still Rights, and their effacement is a matter of constant pain. He feels, as though inflicted on his own person, the wrongs suffered by the Indians and with passionate insistence seeks to arouse in the injured, the courage to assert their God-given manhood.'

"This, Sir, explains who Mr. Horniman is and why he was deported. He was deported because he was a lover of liberty. He loved the liberty of person, he loved the liberty of the Press and he loved the liberty of speech, the three inalienable rights of every person on this earth. Well, Sir, it was in April 1919, that Mr. Horniman was deported. He was then on a sick bed. He could not move about. He was taken bodily to the Bunder and put on the boat. It was perhaps a time of panic and at that time Government in their wisdom thought that the best method of keeping the public peace was to deport Mr. Horniman."

Mr. Patel argued that action against Mr. Horniman had been taken under the Defence of India Act, which had been passed in 1915 for the duration of the war. There was no reason to keep Mr. Horniman under restrictions any longer. Mr. Jinnah, who at that time was the Chairman of the Board of Directors of the 'Bombay Chronicle,' made a short but pungent speech:

I must really say that I am astonished at the answer the Hon'ble the Home Member has given. The Hon'ble the Home Member really reminded me as if he was pleading before a third class Magistrate, and he has displayed no sense of responsibility in giving his answer. In the first instance, he says, "I do not want to go into the merits of the case as to why Mr. Horniman was deported". Then he said that the venue is in London, the Secretary of State for India. Then he said, "Our attitude is exactly the same, namely, that we are not prepared to recommend that Mr. Horniman should get his passport". Again he said, "You might ask the Government of Bombay". Could you possibly imagine a worse quibble than this? The Hon'ble the Home Member knows perfectly well that no Secretary of State for India will go against the advice of the Government of India in this matter.

SIR MALCOLM HAILEY (Home Member): I am delighted to hear that.

MR. M. A. JINNAH: In this matter only. If the Government of India say that the return of Mr. Horniman is dangerous to India, surely that must have an enormous effect on the Secretary of State for India and in ninety-nine cases out of a hundred he would not take the responsibility of acting against that advice. The issue, therefore, today is this: The Government of India say, we do not want to go into the merits.

It is perfectly true that he was deported. I may remind the Hon'ble Member that the order of deportation came to an end as soon as he left British India. That order did not continue. It was exhausted as soon as he reached London and you, not being in a position to continue that order of deportation, resorted to a circuitous method, which is a most discreditable thing for any Government to adopt, and that was to resort to this method and prevent his getting a passport. You refused to give him a trial and you

make allegations against that man. You deport that man, a most horrible procedure to adopt, and I say, no civilised government in any country should resort to that. You have deprived that man of his livelihood. You have prevented that man from going out of England. How do you justify that? And you have done it for four years. That is what I want to know from the Government. How do you justify that? I am really shocked at the manner in which the Hon'ble Member has pleaded his case. It is not worthy of a responsible government to put forward. He says, "we are not concerned with the merits". But, Sir, we are concerned with the merits. Why is a British subject not allowed to go anywhere he likes in any part of the British Empire? We are concerned with it. Why do you refuse that? Why have you prevented that?

Your Secretary of State for India was given absolutely false information and he put forward two allegations, which are absolutely false, and I am prepared to convince this House, because I know that they are false allegations. One allegation was that Mr. Horniman allowed a report to appear in his paper that soft-nose bullets were used in the streets of Delhi. The Hon'ble Member ought to know, because he was the Chief Commissioner of Delhi then.

SIR MALCOLM HAILEY: No.

MR. M. A. JINNAH: Then he ought to know that now. He ought to make inquiries. What happened was that a special correspondent of the 'Bombay Chronicle' sent a report and what is more, Sir, even the Government notification admitted that the appearance of the bullets did lend colour to this conclusion that they were soft-nose bullets, and that information was sent by a correspondent of the 'Bombay Chronicle'. Mr. Horniman was not responsible for it, but that very correspondent, on further examination of those bullets, sent a further report. That report, I am prepared to prove anywhere you like, was not allowed to go out of Delhi and was detained. In the meantime, Mr. Horniman was deported under the Defence of India Act on a charge, not of allowing publication of the soft-nose

bullets being used, not on a charge of distributing his paper amongst the troops, but on a charge of having written two articles. The security was forfeited and censorship was imposed upon the paper and thereupon the 'Bombay Chronicle' had to suspend its publication. It was after Mr. Horniman was deported and when the Secretary of State for India was heckled—I do not know who was responsible—but it was then that this case was made out against Mr. Horniman and Mr. Montagu had to put forward that case. So far, Sir, with regard to the soft-nosed bullets, and I will add one thing more. This telegram which was sent by the 'Bombay Chronicle' correspondent was detained and, in the meantime, the paper was suspended by us ourselves for the simple reason that the editor was deported, security was forfeited and censorship was imposed upon the paper. Therefore, the Board of Directors had, in the meantime, to suspend the paper. After five or six days this correspondent wrote to us a letter saying: "I sent you this telegram contradicting my first report on further examination of the character of these bullets and how is it that it has not appeared in your paper?" Sir, the very first day when the 'Chronicle' re-appeared after its suspension, this explanation was published in that paper; and, as I said before, even the Government notification—and I challenge the Home Member to look it up—admitted that the appearance of the bullets was that of soft-nosed bullets. Is that the case on which you deport a man?

Then, with regard to the distribution of the paper amongst the troops. Sir, a greater lie was never manufactured in any tribunal. As soon as this allegation was made by Mr. Montagu in the House of Commons, we, and I, as the Chairman of the 'Bombay Chronicle', instituted the minutest inquiries and we found, and we were convinced, that there was no man connected with the 'Bombay Chronicle' who ever distributed a single copy of the paper to any member of the British troops. I challenge the Home Member to give me the slightest proof of that. It was a lie manufactured for the purpose of justifying the deportation of Mr. Horniman. I speak very feelingly, because I feel

that no man should be deported and certainly not on such fabricated allegations as these, which, to my knowledge, are absolutely false.

Sir, I am not one of those men who encourage any crime or any offence, but I do maintain, and I have drunk deep at the fountain of constitutional law, that the liberty of a man is the dearest thing in the law of any Constitution and it should not be taken away in this fashion. If you have any case, if Mr. Horniman has committed an offence, place him before a tribunal; let him be tried. Let him he convicted, and, if he is convicted by a tribunal, I shall have nothing more to say; then he must take the consequences. But, Sir, after four years, to hear a reply of this character solemnly declared by the Government, that they consider that it is still dangerous for Mr. Horniman to be allowed to come to India and, therefore, to resort to what I call this most humiliating process of preventing the passport authority from issuing a passport to him. Is that compatible with the dignity of any Government? Is that the manner in which to treat the liberty of your subjects?

Sir, I feel that this is so important and so serious a matter that I hope that every one in this House, be he an Englishman or anybody else, who has the freedom of voting and who has any sense of propriety, will vote in favour of the Resolution, and so make the Government understand that this stands as the biggest blot both on their administration and on their sense of justice and fairplay.

VIII

ON COLONIAL SERVICES

"Now, I am right to the extent that it is essential for you to reform the Services, their organisation and their composition, and that is at the root of any further constitutional advance."—Jinnah.

One of the major issues regularly agitated by nationalist politicians in the pre-independence legislatures was the exclusion of Indians from positions of importance in the Civil Services. This policy was initiated by Lord Cornwallis, who maintained that the Indians were untrustworthy and could not be allowed to fill any but the humblest offices in the administration.

The Charter Act of 1833 tried to meet this criticism when it provided that "no native...shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any place or employment under the said Company." A Proclamation with the same object was issued by Queen Victoria, in 1858, in pursuance of which, a Committee was appointed by the Secretary of State for India. But no action was taken on its recommendations. Several other half-hearted attempts were made to remove the Indians' grievances in respect of their share in Civil Services, but none of these could materially change the situation. At the same time the All-India Services became less and less attractive to the Englishmen. These matters were examined in detail by the Royal Commission on the Public Services headed by Lord Islington (generally known as the Islington Commission) which assembled on the 31st of December, 1912. The Report of the Commission was signed in August, 1915. Because of the War, the consideration of the Commission's proposals was deferred and

the Report was not published till the 26th of January, 1917, by which time some of the premises on which it had been based had changed. At the same time the War gave a new momentum to the Indian movement for self-rule. On the 20th of August, 1917, the Secretary of State for India announced in the House of Commons that the British Government desired "increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire."

It was in this context that the British Government decided to set up another Royal Commission to look into the terms and conditions of Services in India. On the 25th of January, 1923, Sir Malcolm Hailey, Home Member and the Leader of the House, told the Central Assembly of the announcement made by the British Government in London about its decision to appoint a new Royal Commission.

The Indian Members of the Assembly did not react favourably to this announcement and the very next day the House debated an adjournment motion on the subject. In his opening speech on the motion, Mr. T. V. Seshagiri Ayyar, criticised the decision to set up the Royal Commission as unnecessary, unfortunate and undesirable. The adjournment motion was carried. The proposed Royal Commission was appointed on the 15th of June, 1923, and it came to be known, after the name of its Chairman, as the Lee Commission.

Throughout 1923 the Indian Members kept pressing the Government of India to accept their point of view that action on the recommendations of the Commission should be deferred till the Assembly had debated the Report. The Report of the Commission became available in May, 1924, and the Home Member told the Legislature that the Government of India wished to implement the measures of relief suggested by the Commission from the first of April, 1924. The Government of India took the plea that the right of the Secretary of State to take action on "urgent matters" could not be circumscribed.

The Indian Members then asked the Home Member to state what these urgent matters were. Intervening in the debate on the 30th of May, 1924, Mr. Jinnah said:

> Sir, the view that I wish to place before this House is this. Either the Government desire to give this House a real opportunity of expressing their opinion on the matters raised in this Report, urgent or otherwise, or not. That is the first question. If the Government desire to take immediate action in accordance with the recommendations of that Report on the ground that there are certain matters which cannot brook delay, then I would urge upon the Government to formulate those particular items of the Report which they consider are urgent and cannot wait until the September session. When you have formulated those items and if we have no choice, we must make the best of the position, and we must be given an opportunity during the current session to raise a discussion on those particular urgent items. If the Government really desire not to exercise their power, if they think that the opinion of this House is going to receive real consideration, then no items should be determined by the Government without obtaining the opinion of this House.

When the President of the House felt that the Home Member was unjustifiably refusing to give the assurance asked for, he observed:

> MR. PRESIDENT: Are the Government of India prepared to convey to the Secretary of State the desire of this House as expressed by various Members that no action should be taken on any part of the Report till this House has been able to express its opinion?
>
> SIR ALEXANDER MUDDIMAN: Certainly.
>
> MR. PRESIDENT: I take it that the Government of India are prepared to communicate the desire of this House to the Secretary of State.
>
> SIR ALEXANDER MUDDIMAN: As expressed by certain Members.

MR. PRESIDENT: As the general opinion of the House.

SIR ALEXANDER MUDDIMAN: That is a rather different proposition.

MR. V. J. PATEL: That means we should move an adjournment of the House tomorrow.

MR. M. A. JINNAH: Sir, I do ask the Hon'ble Leader of the House to do this much, that he should communicate to the Secretary of State for India that it is the desire of a very large body of the non-official Members on this side. (*Voices*: *"All"*, *"All non-officials"*). The whole body of non-officials. (*Mr. V. J. Patel*: *"And also the officials"*). The point, Sir, that I want to make clear is this. Although we have not formally obtained the vote of the House, it is obvious that there is a very strong feeling in this House that no action should be taken unless an opportunity is given to this House.

SIR A. MUDDIMAN: I am prepared to give an undertaking in the form put by Mr. Jinnah...

The matter was, however, far from over. While it was agreed that the Lee Commission Report would be discussed in the following September, Members kept pressing the Government to inform the House regarding the "urgent matters" and also to give them time to discuss these matters. The exchanges caused considerable confusion. Finally, Mr. Jinnah came to the rescue of the House:

MR. M. A. JINNAH: May I say one word on this point? I should, Sir, feel very much obliged if the Hon'ble Member will give us such items as he considers urgent by this evening, for this reason, Sir, that probably on Saturday and Sunday we may have time to consider our point of view on these urgent matters. If the Hon'ble Member does not give us a statement by this evening or circulate it amongst Members, then, Sir, we shall have very little time. We have only got a few days. Supposing the Hon'ble Member makes a statement on Monday. Tuesday is a holiday

and we shall not be sitting on that day. Or supposing he makes a statement on Wednesday and he asks us the very next day to proceed with a debate. I think the Hon'ble Member will recognise that, that will be still more unfair than what we are asked to do now.

On the 5th of June, the Home Member disclosed the nature of the urgent matters. After the Home Member's speech, again a lengthy discussion ensued regarding the Report. Once again it was Mr. Jinnah who helped in settling the matter.

MR. M. A. JINNAH: It seems to me, Sir, a great deal of confusion has arisen in this matter, and I want definitely to know the position of Government in the matter. As I understand the Hon'ble Home Member, he says that he has given us the information that there are certain urgent matters on which the Government of India and the Secretary of State for India are going to take action......

SIR ALEXANDER MUDDIMAN: May take action.

MR. M.A. JINNAH: I take it, Sir, that it only means they will take action. If the Government of India say that there is no likelihood of any action being taken until we have discussed the Report, then I can understand it; but I do say most respectfully, the word "may" does not in any way alter the situation. As I understand it, the Government of India take up this position, that the Secretary of State will take action on matters which are urgent matters, and further, the Government of India are not prepared either to allot a particular day or to give us sufficient time for the purpose of discussing even those urgent matters, leave alone the whole of the Report. That, Sir, I think, is not a right position to take up.

Finally, the September 1924 session of the Assembly took up an official Resolution to recommend to the Governor-General in Council that some of the recommendations of the Lee Commission be approved in principle. These recommen-

dations called for the appointment of certain Services and their control by the Local Governments, an increase in the recruitment of Indians for the Services in reserved fields, and early steps towards the creation of a Public Service Commission. The Resolution also envisaged a revision of the scales of pay and pensions of the officers of the Superior Civil Services.

Pandit Motilal Nehru moved a lengthy amendment to the Resolution. The first part of the amendment explained why the recommendations of the Lee Commission were considered unsatisfactory. It said the Commission had been set up in utter disregard of the Assembly, the question relating to the Civil Services could not be entertained till the Resolution of the Council on responsible Government had been complied with, that the Commission sought to perpetuate an undesirable system of bureaucracy, that some of the Commission's recommendations were intended to deprive the Legislature even of what powers it had in the matter of administration, that the proposals had introduced racial discrimination in the treatment of All-India Services, and that the recommendations relating to Medical Services discriminated against Indian Army Officers and Indians in the Medical Service. The amendment demanded that further recruitment in England for the Civil Services in India be stopped, that a Public Service Commission be established in India, that the powers of appointment and control of the Services be transferred from the Secretary of State to the Government of India and the Local Governments. The second part of the amendment stated that the exchequer could not be burdened further only to remove the alleged grievances of the Civil Services. However, it was said, the Assembly was prepared to consider these grievances and for this the formation of a Committee of the Council was recommended.

During the debate, Mr. Jinnah spoke in support of Pandit Motilal Nehru's amendment, which was carried by 68 votes to 46, and the Government Resolution was defeated. In 1924 this was a significant victory for the Indian Members of the Assembly.

Mr. Jinnah's speech is as follows:

Sir, in the first instance, I wish to express my appreciation of the method, manner and the tone of the Hon'ble the Home Member, who moved this Resolution. He has tried to put his case before the House as fairly as could be expected from him representing the Government of India, although I noticed that in what he has said there underlies a very important principle which he has asserted and which gives us an indication of an iron hand under the velvet glove. Sir, there is one other matter to which I wish to refer before I come to the merits of this Resolution. I am also very glad that he thought it proper to emphasise the question which has been exercising the feelings of the Muhammadans, namely, that their position in the Indianisation of the Services must be fairly recognised. Speaking on behalf of my colleagues here, who would agree with me, the Muhammadans do not desire anything else but their just and fair share and their proper rights, and I feel confident also that there is no Hindu Member in this House who would for a single moment grudge to the Mussalmans their just and fair rights; and I am glad that the Home Member has also recognised that in this speech.

Having said this much, Sir, I will now deal with this Lee Commission Report. Sir, it is one of the most important and one of the most vital questions affecting India. The gravity or the importance of it cannot be exaggerated. The question that we are discussing today involves two very great principles, and they are so interwoven that you cannot separate them. They are first, the further constitutional advance, and secondly, the administrative reform of the Superior Services. Sir, this House, and I think everybody, must recognise that this, therefore, is a paramount question, a question of the very first importance. Now I think it was Sir Basil Blackett who aspired to be a modern politician and although Sir Charles Innes confessed his inability to indulge in dialectics, he did so indulge, and they took the preamble of the amendment of Pandit Motilal Nehru and objected to the adjectives. I am quite willing Sir, that we should cross the 't's and dot the 'i's but I want to ask a

straight question and I want this House to understand the real meaning of that preamble. First of all, I think it must be admitted in all fairness that this House has got a grievance. If it had any self-respect for itself it could not possibly allow this opportunity to pass without expressing its protest at the manner in which this Royal Commission was appointed. This House was sitting in session in the cold weather of 1923, when the Secretary of State, without consulting it, without giving it an opportunity to discuss the matter, appointed a Royal Commission. Sir Charles Innes says, "Oh, but this Commission has been appointed by the King-Emperor". And, therefore, what? Therefore, why discuss it at all? Surely an experienced officer like Sir Charles Innes ought not to have used that argument at all. Sir, this Royal Commission was appointed by the British Government and this Legislature has every right to deal with the recommendations of the Commission.

Now I ask the next question. After the appointment of the Royal Commission was announced, Sir Basil Blackett, who as usual can always find money when he likes, brought in this item and came to this Assembly with a demand for the grant for the expenses of the Royal Commission. The House perfectly rightly, as a protest, rejected the grant. Now, Sir, is that not a grievance and is this House not entitled to say that this ought not to have been done? The next point is, this Royal Commission was appointed and I know and this House knows, having read the recommendations of the Commission, that they felt embarrassed to this extent, which I shall point out in a moment, that there was this question of future Constitutional advancement under consideration and there was, as we all know, an insistent demand for it in the country for the last three years. But this Royal Commission was appointed to do what? To do this—sub-paragraph 3 of pargaraph I says:

> "The recruitment of Europeans and Indians respectively, for which provision should be made under the Constitution established by the Government of India Act, and the best methods of assuring and maintaining such recruitment."

So the Royal Commission had to assume that any re-

commendations that they might make could only be on the assumption that the Government of India Act of 1919 could not be touched except in the manner provided therein. But it seems there was a great deal of discussion amongst the members of the Commission. There was a difference of opinion, and this is what they say at page 7:

> "We are agreed that in the present conditions, the appointment and control over these Services must continue to vest in the Secretary of State. Some of our members think that the conclusion follows inevitably from the principles implicit in the Government of India Act. Others of our members are not prepared to accept this view and hold that such a transfer is contemplated by the provisions of the Act. In spite, however, of our inability to agree on the Constitutional position, we are agreed that the Secretary of State should, for the present, retain his powers of appointment and control of the All-India Services".

Sir, the House will, therefore, see that the Lee Commission take it for granted that the question of control and recruitment must vest in the Secretary of State for India. In one place they say:

> "It is possible that some difficulties may arise in the future advancement of self-government for India, if some provision was not made in view of our recommendations".

And what provision do they make? The provision they make is this, that if any member of the Superior Services is transferred to Service under the transferred subjects, he would be entitled to retire on a proportionate pension. Well, therefore, I think it is quite clear that the Lee Commission was tied down to make this recommendation on the assumption that the Government of India Act cannot be altered. Now I ask this House and I ask you on the opposite side fairly to tell us if you are going to carry out this recommendation of the Lee Commission with regard to the control and the recruitment? Will that or will that not be an enormous obstacle to any serious changes in the Government of India Act or in the advance of the Constitution?

Can it be said that it will not be an obstacle? Now I am right to that extent that it is essential for you to reform the Services, their organisation and their composition, and that is at the root of any further Constitutional advance. Only last February we passed a Resolution by a great majority in this House, that we want further Constitutional advance. You yourself have thought it fit to appoint a Reforms Inquiry Committee, and the Reforms Inquiry Committee is going on with its work; and you come to us now at this moment and ask us to accept the recommendations of the Lee Commission? What are the implications of the recommendations of the Lee Commission? They are these; the control and recruitment of the Services are to vest in the Secretary of State for India. I am taking it roughly and I am dealing particularly, mainly with the two pivotal Services, the Civil Service and the Police; and in these two Services in the course of 15 years, and 25 years, we reach the percentage of 50 and 50. That means that at the end of 15 or 25 years we shall have 50 per cent Indians and 50 per cent Englishmen. Now, Sir, when we have that, supposing we have to make Constitutional changes, do you expect us to give our consent to that? But, says Sir Sivaswamy Aiyer, that is not the only ground. His ground is that if you want really to Indianise these Services, you must stop the recruitment altogether and he says that you have already got a sufficient element of the English in these two Services, and even if you stop further recruitment, you will take a considerable time before you get that percentage of 50 and 50. I entirely agree with him. Out of the total number of roughly 1,400 members of the Civil Service, how many Indians have we got today? The number is 164. Well even if we have got to get that 50 per cent of that 1,400, how long will it take, how many years will it take, even if you stop recruitment completely? Now, Sir, I ask the House, if you think and if you really honestly wish to consider this question fairly and if you agree to this proposition that this system of Service is out of date, that this system of Service cannot continue in view of the fact that you are assimilating India more and more towards democratic and responsible government, then this system of Service must be reformed

without further delay; otherwise it is going to be a formidable obstacle both in your way and in our way. If you are convinced of that, are you not convinced of this, that today the British element in the Civil Service, as I pointed out, is something like 1,200 and odd, against 164 Indians? Are you afraid that there will be a revolution if you stop further recruitment? Are you afraid that law and order will suffer if you stop further recruitment? What are you afraid of? I can only come to one conclusion, Sir, and that is that you want to delay it, you want to put off the evil day, and you want us to give our consent to the recommendations of the Lee Commission, which will make our position impossible when we come to discuss the greater and far more important question of Constitutional reforms. Sir, on that ground I cannot give my consent and I do urge that further recruitment under the present system should be stopped, that the control of the Secretary of State for India must be taken away and it should be vested in the Government, and that we should have a Public Service Commission for the purpose of future recruitment. Then, I shall be told—I cannot understand why—that the Civil Service and the other Services seem to think that if the Government of India have the control, they will be in a mortal grip and that they will be in danger. But surely that is not really a very nice reflection on the Government. But I can understand my friends there will say, "it is not the Government of India that we are afraid of, but it is you fellows here in this Assembly that we are afraid of". But, I say, Sir—and I can say it with implicit confidence—that there is no man on our side who would make the slightest attempt to break any promise that has already been made to the existing or the present incumbents; and I venture to say, Sir, that whatever may be our faults, if we had to decide and if the responsibility was placed on us, I feel confident that we should decide in the fairest and justest manner towards our own Services. Sir, I entirely subscribe to the proposition that no Government can possibly be unfair or unjust to its Services. On the contrary, I maintain that it is the obligation, legal and moral, of every Government to see that the just grievances of the Services are redressed. Therefore, as far as this ques-

tion of recruitment is concerned, I submit to this House—and I do not merely wish to make a statement, but I want to reason with this House—What is the objection which has been urged up to the present moment by the Government to stopping this recruitment? As far as I have been able to gather, the only objection came from the Hon'ble the Home Member and that, Sir, I call the iron hand under a velvet glove. He said—and I think I am quoting him rightly, if I am wrong he will correct me—that so long as the Empire is in charge of the defence of this country, so long must we have a definite element of British in the Civil Services. What does that mean? May I know how long the Empire is going to be in charge of the defence of this country and when will the Empire be able to say to India—"Now you can take over the defence"? Till then, this bureaucratic system of government is to continue. Till then, there can be no advance towards self-government. Sir, if that is the intention of the Government on the other side, then I say that the whole thing is a camouflage. Things come to an end there, and we can never agree. If your intentions are that you want an administrative reform and that you want to maintain the traditional characteristics of the Service—not British, not white and dark—so that you may soon get the traditional characteristics of the Service and on that footing you go on freely to recruit from amongst the people of India, then I can understand it. I ask, Sir, what have we got in Mysore? How many British are there in the Mysore Civil Service? And are those districts not well-managed? I can tell the Hon'ble the Home Member that there is not one Englishman in the Mysore Civil Service. Perhaps there may be one in the Police. Is not the State of Mysore well-managed? Are not the people there happy?

The next point which I want to deal with is that, as was pointed out the other day, the position of this Assembly really is this. If the Secretary of State is really all-powerful, and we are asked merely to have this debate, then I would be inclined to agree with the feeling of those Members who do not see the use of having this debate. But, Sir, I am very glad to note that the Secretary of State for

India, speaking, I believe, with the authority of His Majesty's Government, in the House of Lords said this:

> "The Secretary of State for India in Council, who is, as the noble Lord has pointed out, the final arbiter responsible to Parliament in regard to practically the whole field covered by the Report, must necessarily subject the Report to a thorough examination on points both of principle and detail. The mere fact that he stated that he accepts the view that the Report must be treated as a whole, cannot of course in any way absolve him from the duty of examining the Report in all its bearings, or commit him in advance to the acceptance of each and every recommendation just as it stands. He must also use the occasion to determine which of the recommendations and their relation to the Report as a whole will, from their nature, require priority of treatment".

Therefore, the Secretary of State for India has reserved to himself the right to examine, in principle, and details of, the Lee Commission recommendations. That is the one bright feature which enables me to stand up here full of hope that there is a chance, although the Government of India have burned their boats by bringing this Resolution forward. Now, Sir, if the Secretary of State for India says, he is not going to commit himself to these recommendations in principle or details, what are we to do? Are you to examine this in principle or details or not? Are we to give our intelligent opinion or not? There is the Hon'ble the Home Member, who says there is such a thing as *factum valet;* the Commission was appointed, it was composed of..

SIR ALEXANDER MUDDIMAN (Home Member): The Hon'ble Member will excuse me, I never suggested *factum valet* in regard to the recommendations of the Commission.

MR. M. A. JINNAH: No, the Hon'ble Member said this: there was a Commission composed of eminent Indians and eminent Englishmen; they have looked into everything;

they have given every consideration and now surely you must really depend on their judgment and so on....

MR. PRESIDENT: I must ask the Hon'ble Member to bring his remarks to a close.

MR. M.A. JINNAH: Sir, I am not going to be very long. I will only say this. The Hon'ble the Home Member really does us a very great injustice when he asks us to dispose of this Report in this way. No evidence is placed before us, no materials even on which the Government of India came to their decision in support of this Resolution are placed before us, and further, when we press the Government, what do we get? We get Sir Basil Blackett getting up at the fag end of the debate and bombarding us with his usual figures. (*Laughter*). Well, Sir, I do not aspire to be a modern financier and I do not think I shall ever be a financier, and for myself I should like to have a little more time before I understand them. Therefore, it is impossible for this House to accept the recommendations of the Lee Commission on these grounds. What have we got? We have got a number of recommendations as to the increase of emoluments, and I have only this much to say: We are prepared—do not treat this last paragraph of our amendment lightly—we are prepared, honestly, earnestly, sincerely to redress the just and urgent grievances of the Services, we are prepared to do that. What do we ask you to do? We ask you to do only this; let us have a Committee straight away, only with regard to this, namely, to determine what should be paid for relief to the Services. We are asking you to give us a Committee straight away. We are willing to sit, place such materials as you can before us. Do not take shelter under the excuse that the evidence before the Lee Commission was given *in camera* and is confidential. Place such materials as you can before us; give us a Committee of both officials and non-officials and let us sit together. We are willing to go to the Committee straight away and I assure you, and I speak not only for myself but for my colleagues and for my party, that we have every desire to meet the just and urgent grievances of the Services. That is the olive branch—you say it is the olive branch—that we

offer you and it was rejected *excatherdra* by Sir Charles Innes, speaking on behalf of the Government, with thanks, of course. I know that, Sir, if this is how you are going to treat the opinion of this House, of this side of the House, we say stop recruitment. We say we are willing to meet the just grievances of the Services.

There is only one word I would like to say, Sir, with regard to the Medical Service. I say, Sir, that the Hon'ble Member in charge of that Department spoke at great length and I really am surprised how he has come to give his consent—not only given his consent but that he should have shown so much enthusiasm at the great advancement that was made in that recommendation. What is the advancement? The Hon'ble Member should have been the last, having had the experience he has had—and I know when he used to sit on this side of the House it was very difficult to convince him on these subjects—to accept it. What has he done? He has done this. He has accepted a principle which to my mind, with the utmost respect to my English friends, is a most vicious principle, namely, that Europeans should have a European medical officer to attend to them. It is a vicious principle; it is an intolerable principle. You yourselves tell us "Let there be no racial distinctions; (*Diwan Bahadur T. Rangachariar: "No caste distinctions"*). Let there be no racial hatreds", and you solemnly and seriously, as the Government of India, come here and say, "Europeans must have European medical attendants". No matter how qualified an Indian may be, you will not have him. Yesterday Colonel Crawford said he was treated by Indians and I see that he is looking quite healthy. I ask the Hon'ble Sir Narasimba Sarma how he came to be a party to that principle. And what is more, he said, "But you see there is no real racial distinction at all; you are mistaken". If this is not racial distinction, I do not know what is.

One more thing about the Civil Medical Service. The Hon'ble Member says there is a great advantage in this. It is perfectly true we have to absorb the Army Reserve into the Civil Medical Service; but you must not forget that the Civil Medical Service will then be under the control of the

Provincial Government. Is that correct? Did I understand him correctly? But does the Hon'ble Member know the implications of that—that you have at least one portion of your Civil Medical Service, namely, the reserves that you will absorb not under your control but under the control of the Secretary of State for India. Does he want this hybrid system to be perpetuated? Is that reform a desirable thing? On the contrary, Sir, I should have thought the view of the Hon'ble Member when he used to sit on this side, if I remember rightly, was that there should be a Civil Medical Service liable to be called up at any time of emergency or war.

I can only say this in conclusion, you have no choice; the Government say, "Accept all the recommendations". We say, "No, recruitment must stop at once; and further we are willing to meet the just grievances of the Services; give us a proper opportunity and we will do it. If you do not, we cannot exercise our intelligent judgement and, therefore, we will not accept the recommendations of the Lee Commission."

One more word. I think I understood Colonel Crawford to say that this House would earn the reputation of being an uncivilised House if it did not accept the recommendations of the Lee Commission. On the contrary, I say not only will this House earn the reputation of being uncivilised if it blindly, without proper material, accepts the recommendations of the Lee Commission, but it will certainly be worse than an uncivilised House. One more thing I say to Colonel Crawford and that is this. He talked a great deal of acumen and I think the Hon'ble Member in charge of Education talked of the larger point. I do not know what implication the word "acumen" has, or the words "the larger point" have; but, Sir, does it mean this, that we are expected to vote blindly for some favours to come hereafter? And what are those favours? Neither has Colonel Crawford nor has the Hon'ble Member in charge of Education favoured us with any indication of the favours that will follow if we vote blindly now.

IX

IMPORTS ON GOVERNMENT ACCOUNT

. *"We must try and get our stores in this country in the first instance, if we can; we must try and help the industries of this country, and the indigenous goods that this country can and does produce."—Jinnah*

Early in 1924, during the first session of the second Legislative Assembly of India, Mr. Jinnah surprised his colleagues in the Assembly by moving a Resolution on a "very dry subject", namely, the purchase of a variety of goods by the Government of India. These goods ranged from water bottles and tracing cloth to cement, wheels, axles and locomotives. These purchases were made wholly, or largely, by the Stores Department of the India Office in London which invited all the tenders in London and in sterling. During the War (1914-19), however, circumstances forced the Central Government to make larger than usual purchases in India, which opened hitherto unknown opportunities for the Indian industrialists and businessmen. Thus, when after the War, the London Stores Department reverted to its old practice, the Indian public opinion protested strongly. The continuation of this system was considered an attempt to thwart the growth of the Indian industry. Apart from the amount of remittances, it involved the principle of regulating imports on State account. It had also been noticed that the Stores Department in London sometimes rejected the lowest tenders submitted by parties outside England, notably German and Czechoslovak, in favour of British firms. Mr. Jinnah's Resolution summed up this grievance and the desire to put an end to discrimination against Indian interests.

The Resolution, however, was no isolated instance of Mr. Jinnah's interest in such matters. During the same session

he expressed concern for the growth of the indigenous steel industry, questioned the policy of purchasing locomotives from England in preference to a firm's offer to build them in India, and queried about the concessions given to or extracted from India at the post-War economic conferences. Before he moved his Resolution he had put questions about the volume of goods purchased by the Government in India and abroad.

In the course of discussion on the Resolution, Mr. Jinnah maintained his role of an advocate pleading his case before a none too sympathetic bench. He was more interested in driving home India's point of view than in protecting the wording of his Resolution. When a European Member, Mr. Willson, moved a substantial amendment to his Resolution he gracefully accepted it and had the satisfaction of seeing the Resolution passed without a division.

The Industries Member, A. C. Chatterjee, in reply to the speeches of Jinnah and Willson tried to justify the prevalent position with respect to the Government purchases. In the course of his speech he paid tributes to the Mover. He said: "If I may venture to do so, I should like to congratulate the Honourable the Mover of this Resolution on the very interesting speech to which he has treated us on what he called a very dry subject. I cannot claim his eloquence and I am afraid that I may tire the House in trying to throw a little bit of light here and there on this dry subject. But I hope that the House will listen to me with patience..."

Mr. Jinnah's speech on his Resolution follows:

Sir, the Resolution that I wish to place before this House is of the utmost importance to India. It runs as follows:

> "This Assembly recommends to the Governor-General in Council that in future tenders for any article required for any department of the Central Government should be called for in India and in rupees, and that the Stores Department at the India Office should be maintained only in such strength as would enable old contracts to be worked out".

We have recently been discussing the very great question of constitutional reforms, and although this Resolution of mine may not interest every Member of the House, it being a very dry subject, I have no doubt that when Hon'ble Members understand this question and take the trouble of going into it, they will realise that it affects India most vitally. The question has been discussed and debated for almost the last 75 years. The question is this. The Government of India have to purchase what is called stores. Enormous quantities of articles of various descriptions are required by various departments in this country; and, Sir, the total amount which is spent on the purchase of these stores comes to almost 20 or 21 crores of Rupees. Therefore, I want the House to understand that the revenue of this country used for the purpose of purchasing these stores, is something like 20 or 21 crores of Rupees. I do not wish to go into ancient history, but this question was brought to a head when the Industries Commission was sitting, of which this House is aware, and out of the recommendations of the Industries Commission a Committee was appointed by a Resolution of the Government of India on the 5th of December, 1919. The terms of reference to that Committee are of very great importance, and, although the Resolution appointing that Committee is very lengthy, I will try to put before the House the important point of reference to that Stores Committee, which was in the following terms:

> "The Government of India have decided to constitute a Committee to inquire into the matters indicated in

> this Resolution and to frame a definite and, so far as possible, a detailed scheme for the purchase and inspection of stores in India. Certain general principles have been, it will be observed, accepted by the Government of India and the Secretary of State. It will not be necessary for the Committee to discuss these further and they should concentrate their attention on the difficult and complicated task of devising a scheme which will, as far as possible, meet the needs of the different inferests concerned while keeping fully in view the fundamental principles of efficiency and economy".

Now, Sir, the object of the reference to this Committee was that, so far as stores are concerned which are required by the Central Government and the various departments, they should, as far as possible, be purchased in such a manner as would be in the best interest of India. The first question that we have to consider is this—what is the present constitution of the system which is conducting these operations, namely, purchasing stores? We had at the time this report was made what we called the Stores Department of the India Office and we had some sort of department in India. The bulk of, in fact almost all, the stores were purchased by the Stores Department of the India Office in London. The tenders were invited there and all the tenders that were invited were in sterling. So far as India is concerned, during the War, when we had what is called the Munitions Board, it gave some sort of impetus to indigenous manufactures and articles which could be had in India. The attempt, I believe, was made successfully, because during the War the necessary stores could not possibly be had in this country, and I believe Sir Thomas Holland, who was then the head of that Department, over and over again said that he was surprised at the quotations offered in India for the purpose of getting indigenous articles which the Government of India required. Soon after the War was over these efforts were relaxed and almost disappeared. Again, when this Committee was sitting, the position was that practically the whole of the stores which were required for India were pur-

chased in London by what is known as the Stores Department of the India Office. This Committee, when it went into the question, said:

> "In view of the necessity of encouraging Indian industries, while at the same time securing economy and efficiency, in the purchase of Government requirements, the Committee should inquire and report what measures are required to enable the departments of the Government of India and the Local Governments to obtain their requirements as far as possible in India and what central and local agencies for purchase and inspection should be constituted; and what should be the relation of such agencies with one another and with the Stores Department of the India Office or such other purchasing organisation in England as may hereafter take the place of that department; and what modifications of the Stores Rules will the scheme by the Committee necessitate".

This Committee went into the history of the whole question and it reviewed the various steps attempted which I do not call steps at all, because, ever since 1862, although certain proposals were made by the Government of India and successive Secretaries of State one after the other, yet unfortunately the case of India remained where it was. I shall read a passage from the report of this Commission which will enlighten this House as to how our Government, represented by, as it is, a very able Executive, have not been able to do anything at all. I shall read to you only a small passage. It says:

> "In 1908 Lord Morley was unable to accept the draft rules proposed by the Government of India on the recommendation of the Stores Committee; similarly in 1918, a proposal for local purchase of plant and machinery, which had been discussed with Sir Lionel Abraham and accepted in principle by Lord Crewe, was returned by the Secretary of State for further consideration. In all these cases the correspondence

> shows the advice of the Indian Stores Department to have been the dominating factor, and we cannot but observe that the attitude of that department has been in the main one of opposition to any measure which would lead to either purchase or manufacture in India, and thus result in the gradual transfer of the supply of stores from the British to the Indian field".

You will thus see, Sir, that the question has been going on since 1862; and right up to the time of Lord Crewe as the Secretary of State for India the position was that the attitude of the department which is called the Indian Stores Department was to put every difficulty in doing anything which would lead either to the purchase or manufacture in India, and thus result in the gradual transfer of the supply of stores from the British to the Indian field. Well, Sir, that has been our fate for the last 75 years. Now, today, as far as I have been able to understand the position, it is this. We have now got a High Commissioner instead of the Indian Stores Department. It is a high sounding name and the High Commissioner is supposed to be the agent of the Government of India. But let me tell this House that, although instead of calling it the Stores Department of the India Office, it is called the High Commissioner, the rules and regulations by which he is governed are practically the same, and the position for all practical purposes remains the same in fact. He (the High Commissioner) is guided by certain rules and regulations and he is, therefore, only entitled to invite tenders there in sterling. The Intelligence Department is there; the Inspection Department is there and (I do not wish unduly to criticise the High Commissioner because it is not so much his fault as the system under which he is working) the result is really that no fair or proper competition is allowed by the European markets; the result is that owing to the manner in which these tenders are invited, the advertisements which are inserted only in the English language do not reach other countries like France, Germany, Belgium, and so on. The result is that in effect really it gives a tremendous advantage to the British manufacturers who are on the spot, who get the information first;

and invariably it is really for all practical purposes confined to the tenders coming from the British firms in England. That is one part.

Then you have some sort of department in India, which is supposed to purchase by annual contracts. I speak subject to correction; I frankly admit that this is a very complicated subject and I shall be very glad if the Honourable Member in charge will throw some further light and I shall certainly stand corrected. You have got a department here which enters into what are called annual contracts, and the purchasing department in India is again controlled by rules and regulations; and the rules and regulations are such that they can be best described in the words of the representation of the Indian Merchants' Chamber and Bureau, which I shall read now. They say this:

> "The principal features of the new rules that have struck my Committee are:
>
> (1) hedging in by purchasing officers in this country with such possible restrictions as the furnishing of proofs that it was not bought at rates more unfavourable than in England;
>
> (2) the need of satisfying himself that the greater part of the articles purchased were manufactured in this country;
>
> (3) the worst example of the restrictions on the powers of the purchasing officer is in the new rule 5 to which we beg refer.
>
> "My Committee think that the only result of such a rule will be that concessions apparently given under other rules for the encouragement of Indian trade and industry will become nugatory, because very few officers will take upon themselves the responsibility of buying in this country and having to furnish the proofs required and naturally take the easier course of indenting from England to save themselves from future trouble. As the underlying principle of the

new rule seems to be to have as great a part of the stores as possible purchased in England......"

MR. A. C. CHATTERJEE (Industries Member): I am sorry to interrupt the Hon'ble Member. May I ask him the date of that letter?

MR. M. A. JINNAH: Yes, with pleasure. The date of that letter is 29th September 1921. And may I ask the Honourable Member whether those rules have been altered since? As far as I am aware, those rules have not been altered....

MR. A. C. CHATTERJEE: They are being altered.

MR. M. A. JINNAH: They are being altered. But have they been altered? Therefore, these observations are perfectly relevant, if I may say so, to the subject matter of this Resolution. Those rules exist today, and it is under those rules that you are carrying on your purchasing operations..

MR. A. C. CHATTERJEE: I think, Sir, to avoid misapprehension, I may explain that, so far as I can gather, the Hon'ble Member is reading the criticisms of the Indian Merchants' Chamber and Bureau of certain draft rules which were published by the Government of India in March 1921. Since then new rules have been framed by the Railway Industries Committee and those are now under consideration.

PANDIT SHAMLAL NEHRU: Do the Government propose to put those new rules before this House?

MR. M. A. JINNAH: I am fully alive to the fact that there are many things which are under the consideration of Government at the present moment. The whole administration is under the consideration of Government. I am fully alive to that. But I think the Honourable Member will concede this, that the purchasing officer today is guided by those rules. What is the rule, what is the principle, that is laid down as a guide for the purchasing officer today in India? Is it or is it not, in spirit if not exactly in letter, what

I am reading now? If that is so, I say that rule No. 5 is one which undoubtedly makes it very difficult for any officer to take the risk of producing those proofs. There are so many conditions laid down and his powers are so hedged in that a man will naturally say to himself, "Why am I to take this risk of producing the proofs and satisfying my superior? The best thing is to indent for the goods from England and be done with it". That is not the way to achieve the object which has been asserted over and over again but never has been carried out. Now let us proceed further. The question really is this. We have been considering this question for the last 75 years, we have been purchasing almost the bulk of our stores in London and those goods are purchased in London, and tenders are invited and these tenders are invited in sterling. Now the question really before the House is this. I will try and reduce it to propositions in order to get a definite answer from the Honourable Member in charge. The first question before the House is this, and I would like the Hon'ble Member to satisfy us on that. What is being done or what has been done in order to bring about a gradual transfer of supply of stores from the British to Indian fields? Secondly, what has been done, so far as we can see, to obtain stores in India manufactured in India, I mean stores in which the Government have a free hand in their purchase? Thirdly, I would like to know what has been done with regard to this question, that those articles which have to be purchased from foreign countries should be purchased (no doubt at lowest tender, quality alone being the test) at rupee rates? Fourthly, I should like to know the exact system under which we are now working.

Fifthly, what steps have been taken, if any, in regard to the question whether London is going to be a branch or the head, whether London is going to be reduced to a mere agency or is it to be the centre? Remember, Sir, the present position is this. As I told the House before, the bulk of the stores are purchased in London, that everything is there. There is hardly anything here which is done for the purpose of purchasing stores. What is it that the Government propose to do with regard to that? The Commission have made their recommendations, and in their recommen-

dations, they distinctly say this: They have realised the whole position, and they have recommended a particular policy. I will give the House, just a brief summary of what they have said in the various paragraphs, as far as I can. In the first instance, they recommend that London should merely be a subordinate branch and that the centre or the headquarters should be in India. They recognise all the arguments that were advanced, and all the arguments that were advanced against were, that there will be the middlemen, that there will be difficulties in the Intelligence Department, that there will be difficulties in attending to the inspection. They have considered all those arguments and they have deliberately come to the conclusion that all those defects can be very easily removed in a very short time, and they fix roughly five years. And they say in their conclusion, which I shall read to the House:

> "The Stores Department of the India Office",

which at present is the High Commissioner, but practically the same:

> "The Stores Department of the India Office shall eventually become a branch of the Stores Department in India. We predict no date by which this change will be effected, the circumstances forbidding any certainty on this point. Assuming, however, that the response of the people of India to the whole-hearted encouragement by Government of their industries is equal to that of the people of Japan in similar circumstances"

an assumption that need not be doubted:

> "we see no reason why the change should not take place within five years."

Sir, then the bulk of the stores are required by the railways; I believe about Rs. 14 crores roughly. We have the State-worked railways and we have the company-worked railways; and then we have various other Departments,

such as the Army, and then there are medical stores and so on and so forth. I do not wish to trouble the House in regard to those details. I, therefore, in my Resolution recommend to the Governor-General in Council that, in the first instance, we should invite tenders in rupees in this country and that all the outstanding contracts may be left to be carried out by such agency as at present exists. But it is quite possible that I shall be asked, what is going to be the future system under which this will be worked? I admit that I have not suggested a system. I do not suggest a system in my Resolution. I think it will be very difficult for any non-official Member to lay down a definite scheme for a system which ought to be established. But I think I have shown sufficiently to this House that the present system is undoubtedly not in the best interests of India. It is entirely for Government, after further consultation, if they require further consultation, though I should have thought that sufficient light has already been thrown on the subject having regard to the Industries Commission, having regard to the Stores Department Committee, and having regard to the correspondence which has been going on between the Government of India and successive Secretaries of State for India for the last 75 years, to devise some system. But the question really is this. Any system which you may devise must be a system which will reduce London to a subordinate agency while the centre or head should be here, and tenders should be invited in rupees. I tell you, Sir, why that system is the only system which will be for the benefit and welfare of the country. If you have the headquarters here, they will be subject to criticism, subject to examination, not only by the public and the Press, but by this House. At present it is almost impossible to get any definite information within a reasonable time as to what is happening in London. That is the first reason why I say that the headquarters should be here. Secondly, if the headquarters are here, and if our industrialists and businessmen know and get accurate information as to what the requirements of Government are, every effort will be made to meet those requirements. Remember, that demand produces supply, and there are many articles which can be manufactured in

India today by firms who at present have no incentive to manufacture them, because they do not know of the intensity of the demand, because the demand is placed in London and not in Delhi or even in Simla. I mentioned to you the Munitions Board which was conducted by a very able officer, Sir Thomas Holland. I had the privilege of knowing him and he assured me times out of number, "it is astonishing the number of articles which we can get here and the materials which are available here." And why, because during the stress of war it was a necessity. We could not get stores from foreign countries or from England, and we therefore, had to make herculean efforts and the result was that those quarters where possibilities existed were encouraged, were helped, and were given information, with the result that a number of indigenous articles were forthcoming for supply to Government.

My third reason for supporting it is that if you have tenders invited in India in rupees, it is the best; but—without anticipating more than I can help—I think I shall be told that the manufacturers may not take the risk of exchange. But, Sir, what is the basis of this argument, if that argument is going to be advanced? I shall wait until I know the reasons, but I think it is obvious, and I think the House will agree with me that if you are going to invite tenders in rupees, see the advantage to India. The advantage to India is this, that by your having to keep the Sterling money in London for the purpose of paying six months or eight months hence, without interest or very little, when deliveries are due in London, we are being handicapped to that extent by the locking up of that money against the payment on delivery. If, on the other hand, the rupee tender was invited and accepted, the Government have plenty of notes, I think, and they can print a few more if they want, and can hand over the currency of the country to the man who gives delivery in this country. I really see no reason against it; I see no difficulty in the matter. We are not the only country in the world which will be following that practice. All other countries invite tenders in their own currency. What country is there which invites

tenders in foreign currency? I should like to know that. Then why should we not invite tenders here in rupees? Therefore, Sir, my submission is that the time has come, and indeed it came a long time ago, when the Government of India should take immediate steps to invite future tenders for all stores that are required by the Government in rupees. I understand that the Local Governments, when they want to purchase stores which they cannot obtain locally, also go to the High Commissioner. Similarly, the Central Government, and I believe, the State-worked railways have to do the same. For the railways which are company-worked railways a similar procedure is laid down, but I understand from the Report of the Commission that they do not utilise it. Therefore, at present the position really is this, that the more you look into it, the more you examine it, it comes to this really, that the very purpose that we have at heart, the very object that we have in view, namely, that we must try and get our stores in this country in the first instance, if we can, that we must try and help the industries of this country, and the indigenous goods that this country can and does produce, is frustrated. Of course, I am not advocating that we should pay for Indian goods because they are made in India. But, the object that we have at heart is really destroyed, is lost, so long as we continue this present system. And, therefore, I put it before this House, and I am sure that this House, will agree with me, and really it requires no argument now, because even this last Committee that was appointed made these very recommendations which I have pointed out to the Hon'ble Member. This Report was made in July, 1920, and since then, as far as I understand, and as the Hon'ble Member said, the rules are being considered, but hardly anything is done to give effect to the recommendations of the Stores Committee. Instead of the Stores Department of the India Office, we have now got the High Commissioner and practically we are in the same position as we were before. The High Commissioner may lose perhaps his present very pleasant or unpleasant occupation if the proposal which I have put before the House is carried out by the Government, but I will point out again from the representation of

the Indian Merchants' Chamber, where they also contemplate that the High Commissioner may be deprived of his present occupation. This is what they say:

> "What will then be the position of the High Commissioner?——

And I cannot help quoting it because it seems to me so true:

> ——"The High Commissioner for India may be continued in London and allowed to act as a sort of post-office for purchase, as an official to represent India at ceremonials, which is practically the kind of work done by the High Commissioners for the self-governing colonies and Dominions in London."

Well, Sir, if we are aspiring to Dominion status, we might follow at least in giving that status to our High Commissioner. I hope that this House will accept the Resolution I have placed before it.

X

REFORMS IN NWFP

"Is there one principle for the people in India and another for the people in the North-West Frontier Province of India? You say they are not fit; you say they are incompetent; so the rest of India will keep the North-West Frontier Province under your heels and under your subjection."—Jinnah.

In the mid-twenties the main political issue in the NWFP was the extension of the constitutional reforms embodied in the Government of India Act of 1919 to that Province. The British had maintained from the very beginning that the areas where their rule was older (as in the Presidencies of Bengal, Madras, and Bombay), the people had been civilised to a greater extent than in areas they had conquered in the last years of the East India Company. The former territories were classified as Governors' Provinces and the others were told to be content with relatively minor concessions. The most glaring example of this discrimination was the North-West Frontier Province. Its people were denied the share in responsible government that the Constitution of 1919 had granted to the Governors' Provinces. The demand that the NWFP be raised to full provincial status gained considerable strength when towards the end of 1922 the Report of the North-West Frontier Inquiry Committee was released. The Committee's majority had recommended several reforms in the Province but the Government of India showed little sign of its willingness to expedite action on these proposals. The cause of the NWFP people was taken up by progressive politicians throughout the country. Obviously, the Muslim community showed special interest in the matter. The All-India Muslim League called for immediate extension of constitutional reforms to the NWFP and later on, when Mr. Jinnah evolved a

formula for Hindu-Muslim unity on the basis of a joint electorate, the grant of full provincial status to the NWFP was one of the demands the Congress was asked to accept.

Mr. Jinnah spoke on this subject in the Indian Legislative Assembly on March 18, 1926, in the course of discussion on a Resolution. But, earlier in the session, he had raised the issue through a Question and had actively participated in discussions generated by Questions asked by some other Members. The Resolution in reference was moved by Maulvi Syed Murtaza Sahib Bahadur, from Madras, and it said:

> "This Assembly recommends to the Governor-General in Council that he be pleased to extend to the North-West Frontier Province the provisions of the Government of India Act, which relate to the Legislative Council and the appointment of Ministers, etc., with protection to the minorities."

The discussion on the Resolution followed a curious pattern. The Government of India were somewhat apologetic about the delay in the NWFP's constitutional progress. Some of the Englishmen, including Sir Denys Bray who had written the majority Report of the Inquiry Committee, were in sympathy with the Resolution but a number of Hindu Members were strongly opposed to it. They said the people of the NWFP were not fit for responsible government. Their opposition took the form of two amendments. One of these said:

> "That for the original Resolution, the following be substituted:
>
> > 'This Assembly recommends to the Governor-General in Council that he may be pleased to arrange to amalgamate the settled districts of the NWFP with the Punjab, in order to secure to the people of these districts the benefits of the Reforms.' "

The second amendment was:

> "That for the words 'extended to the North-West Frontier Province the provisions of the Government of

India Act, which relate to the Legislative Council and the appointment of Ministers' the following be substituted:

> 'introduce in the North-West Frontier Province an unitary and autonomous, responsible government with full protection for minorities, subject to the general control and residuary powers of the Central Government in inter-provincial and all-India matters.' "

Both of these amendments were opposed by Raja Ghazanfar Ali Khan, Khan Bahadur Ghulam Bari, and Mr. Abdul Haye (all from the Punjab), who strongly supported the Resolution. The Resolution was also supported by Sir Darcy Lindsay (European), Khan Sahib Makan (Bombay), and Lt. Col. Gidney (Anglo-Indian). Sir Denys Bray made a short speech in which he said: "My contribution to the debate this evening will be confined almost entirely to a defence of the Frontier and of that man—more than whom I have not known a finer one—the man of the Frontier Province..."

The Government position was explained by the Home Member, Sir Alexander Muddiman, who said:

> "The question what, and in what direction, constitutional advance can be given in the North-West Frontier Province has been, and is, under the consideration of the Government. No definite decision on that point has been arrived at, and no definite decision on that point will be arrived at, or announced, till Government are satisfied that they have come to a right conclusion, and the moment for its announcement is ripe. Therefore, the attitude of the Government towards this Resolution must be one of neutrality..."

The Resolution was fiercely opposed by Sir P. S. Sivaswamy Aiyer a nominated, non-official Member from Madras, Diwan Bahadur T. Rangachariar (Madras), and Sir Hari Singh Gour (Central Provinces). The following extract from Sir Sivaswamy Aiyer's speech can give an idea of the kind of

arguments that were used to deny the NWFP its share in self-government. He said:

> "......Apart from all the numerous objections in principle, which I have referred to above, it is necessary to point out that owing to its peculiar situation, and the relations and affinities between the Pathans on both sides of the border, the excitability of the people, and their liability to sudden commotion and upheaval at the bidding of fanatical *mullahs,* as illustrated by the Hijrat and the insurrection in Mansehra, the sway of Pan-Islamic ideas and sentiments, and the menace of Bolshevism, the political dangers of an extension of popular government to the Province cannot be ignored......The gift of prophecy is denied to me. I can only form my judgement upon the evidence and my task is only to warn the Government of India against the perils of the adventure upon which they are urged to embark in the pursuit of a policy, which I am afraid, will prove a monument of political unwisdom..."

Eventually, the original Resolution was carried.

Mr. Jinnah spoke in defence of the NWFP, after Mr. Aiyer:

Sir, the question before the House is one which requires a great deal of restraint to begin with, and even then one might say a word here or there unwittingly which might give offence to one side or the other. Sir, I do not wish to deal with this question from the communal point of view at all. I have had the honour of working with my Hon'ble friend Pandit Madan Mohan Malaviya since 1906. If I remember it rightly, when I first stepped on the platform of the Indian National Congress, it was my friend before whom I stood as a junior, who induced me and persuaded me to make my first speech on the platform of the Indian National Congress. Ever since then, I have worked with him and I have always looked upon him with the greatest admiration and respect. I have a feeling that my Hon'ble friend Pandit Madan Mohan Malaviya is as much a nationalist as any living Indian today in India. But, Sir, sometimes we are likely to lose heart. We are sometimes likely, honestly, to be prejudiced. There is such a thing as honest prejudice. I can fully enter into the spirit, although I cannot agree with the language, of my Hon'ble friend as to what he feels. And I can also equally enter into the spirit of my Muhammadan friends as to what they feel when they think of horrible incidents which have taken place not only at Kohat but in other parts of India as well. Sir, it is a common ground; it is our misfortune. But I appeal to my Hon'ble friend; are we going to lose heart?

PANDIT MADAN MOHAN MALAVIYA: No.

MR. M. A. JINNAH: Are we going to budge from our principle that we shall attain freedom for India? And are we not going to treat this question of the North-West Frontier Province in the same spirit as we would treat the question of any other Province? Sir, India is not the only country where we have to face a problem of this character. I will only read a few sentences from the report of Lord Durham where he describes the condition of the people in Canada, and yet Lord Durham recommended the establish-

ment of responsible government in that part of the world. This is what he said:

> 'The first point to which I would draw your attention, being one with which all others are more or less connected, is the existence of a most bitter animosity between the Canadians and the British, not as two parties holding different opinions and seeking different objects in respect to Government, but as different races engaged in a national contest. The hatred of races is not publicly avowed on either side. On the contrary, both sides profess to be moved by no other feeling than such as belong to difference of origin. But the fact is, I think, proved by an accumulation of circumstantial evidence, more conclusive than any direct testimony would be, and far more than sufficient to rebut all mere assertion to the contrary. If the difference between the two classes were one of party or principles only, we should find on each side a mixture of persons of both races, whereas the truth is that, with the exception which tends to prove the rule, all the British are on one side and all the Canadians are on the other side. What may be the immediate subject of discussion seems to be of no consequence, but so surely as there is a dispute on any subject, the great bulk of the Canadians and the great bulk of the British appear ranged against each other. In the next place, the mutual dislike of the two classes extends beyond politics into social life where, with some exceptions, again all intercourse is confined to persons of the same origin. Grown-up persons of different origins seldom or never meet in private society and even when the children quarrel they divide themselves into French and English like their parents.'

Sir, this, I think, is a much worse and more deplorable condition than what exists today in India. Do the Hindus and Muhammadans not mix socially? Do your children in schools play divided as Hindus and Muhammadans? Why, there-

fore, lose heart, and despair? It is a problem which we have to solve, and we shall solve it provided we work together. At least the Hon'ble Members of this House, the representatives from different parts of India, are certainly expected to, and should, give a different lead to the rest of India.

Sir, the question, therefore, before us is this. Here is a Province, the North-West Frontier Province, whose people, it is admitted both by the majority and the minority, possess the qualifications which, even according to the definition in the speech of my Hon'ble friend, Sir Sivaswamy Aiyer, would entitle them to reforms. Sir Sivaswamy Aiyer was more spirited than I have ever seen him when speaking in this House, and he said that in order that a Province should claim self-government, the people of that Province must possess certain requisite qualifications. What are those qualifications? He says, Sir Denys Bray merely says that they are a virile and a manly race, but that is not sufficient. But, Sir, did the majority stop there? The majority in their Report make it quite clear what they are, and I will read that passage:

> 'The Frontier inhabitants are assuredly not behind the rest of India either in intelligence or in capacity to manage their own affairs. Their aspirations for reforms have been awakened into full consciousness and will not be satisfied by anything short of the essentials of the reforms enjoyed elsewhere.'

SIR P. S. SIVASWAMY AIYER: It is not supported by the evidence.

MR. M. A. JINNAH: The Hon'ble Member says it is not supported by the evidence. I do not know how he has been able to get at this evidence. I tried to get a copy of it but could not obtain it. The evidence is not published and is not available, and I do not know who supplied him with the evidence.

SIR P. S. SIVASWAMY AIYER: The evidence as quoted in the Report.

MR. M. A. JINNAH: I beg the Hon'ble Member's pardon. The evidence certainly does not support the idea that

they are wanting in intelligence, that they are wanting in capacity, that they are wanting in manliness. One of the members of the minority committee, the Hon'ble Mr. Rangachariar, praised their great qualities of head and heart. If that is the evidence you want, there it is. If my honourable friend wants merely to take his stand on communal grounds, I can understand that feeling very well. If you wish to say this, that there happens to be a small minority of Hindus and that you apprehend that the minority will be entirely at the mercy of the Mussalman majority, therefore, the North-West Frontier Province must be amalgamated with the Punjab, I can understand that argument. I can understand that you think the Hindus in the North-West Frontier Province, who are now only 5 per cent, with the help of their co-religionists in the rest of the Punjab would stand in a better position, if they are amalgamated with the Punjab, to resist any act of tyranny or aggression on the part of the majority who still would remain to be Muhammadans. That I can understand. But let me, Sir, say to my honourable friend, Sir Sivaswamy Aiyer and my Hon'ble friend Pandit Malaviya that I have revolved this question a great deal in my mind and the answer is quite obvious, apart from the other objections which are so clearly pointed out in the majority Report. The people of the North-West Frontier Province linguistically, ethnologically, geographically, and in every other sense, are different from the Punjab people, and why are you going to force these people, against their will and against the will of the Punjab itself, to be amalgamated with the Punjab? Sir, it is not a small Province. It is a Province with two millions of population. Even Australia has, I believe, a population of only four millions. And, as my friend Dr. Hyder pointed out, in Europe we have independent States of which the population does not exceed more than two millions. Therefore, how can you force these people against their will and say, 'you shall be foisted upon Punjab'? It seems to me, Sir, that either amalgamation or, if no amalgamation, reforms must be given to that Province. What benefit would you get if no reforms are given to this Province and what prejudice, what harm will be caused to the Hindus if the reforms are given

to this Province? Do you think that law and order is going to be handed over to a Minister immediately?

DIWAN BAHADUR T. RANGACHARIAR: Why not?

MR. M. A. JINNAH: You think it will be?

DIWAN BAHADUR T. RANGACHARIAR: Do you think it will ever come?

MR. M. A. JINNAH: Yes, by that time I think even my honourable friend might improve in his ideas. Why should it not? I only want to know what is the immediate danger that you are afraid of.

DIWAN BAHADUR T. RANGACHARIAR: Why don't you hand it over now?

MR. M. A. JINNAH: Yes, don't you ask for it yourself in Madras?

DIWAN BAHADUR T. RANGACHARIAR: Exactly.

MR. M. A. JINNAH: Then why should they not have it? Is there one principle for the people in India and another for the people in the North-West Frontier Province of India? You say they are not fit; you say they are incompetent; so the rest of India will keep the North-West Frontier Province under your heels and under your subjection.

AN HON'BLE MEMBER: They cannot.

MR. M. A. JINNAH: What is the good otherwise of putting forward this argument? Will they never get full-fledged self-government? Why not? You want it, they want it. Why should they be denied if they are fit for it? If you admit that amalgamation cannot be a just measure to adopt, apart from the difficulties which have been pointed out by the majority Report, and the majority Report points out innumerable difficulties, I do not want to weary the House, it has already been so fully discussed. Well, I ask, what is your answer to two millions of people who say, 'We do not want to go to the Punjab'? Why must you force them?

DIWAN BAHADUR T. RANGACHARIAR: When did they say that?

MR. M. A. JINNAH: I have got the authority; I have got telegrams and letters from almost every important town sent to me.

DIWAN BAHADUR T. RANGACHARIAR: What did they say before the Committee?

MR. M. A. JINNAH: The same thing. I have got reports of meetings that have been held for several weeks, and I ask the Hon'ble Member to point out to me a single Muhammadan meeting which has been held against the view I am putting forward. I know the Hindus do not want it; I know that. (*Some Members*: *"The Mahasabha does not want it."*) Show me a single Muhammadan who is against the reforms. Even the opinion of Nawab Akbar Khan has changed since, he went back to the North-West Frontier Province. (*Mr. K. Ahmed*: *"He was misled."*) Therefore, Sir, if I cannot convince my honourable friend there, I am sure the Government at least have more knowledge and are less ignorant than my honourable friend there as to what the feeling is. Now, Sir, what do these people really want? They are living today under an administration—what administration? To describe it in the words of an Anglo-Indian paper, '*The Times of India*', this is what it says.

> "While fighting the battle of freedom day by day these Hindu organisations yet find it in their hearts to advocate a continuance of the obscurantist, mediaeval principles of government, bureaucratic high-handedness and policy of *zoolum* for which the Frontier Government has been so often criticised.'

Do you want that to continue?

Sir, the next argument is the cost. Nobody has challenged the figures which are given by the majority committee and from that you see that the total additional cost of all these reforms, which the majority committee recommend, will come to Rs. 1,13,162. Out of that, remember, the Additional Judicial Commissioner has already been sanctioned. And you find that these are the three items; Pay of Minister

and allowances of members Rs. 42,500; Additional Judicial Commissioner and Establishment Rs. 43,782. That has been sanctioned. Therefore, the two items that remain are Rs. 42,000 and Rs. 26,000, which come to about Rs. 68,000. Well, Sir, are we going to escape the payment of the deficit of 20 lakhs which the majority Report points out is the present deficit, which even the majority Report does not say is wholly due to internal administration? It is difficult, they themselves realise, to separate what is the Imperial or the Central defence expenditure and what is the internal administration expenditure; and, further, they even go to the extent of saying that even that will be wiped off within a short time. This is what they say:

> 'If the expenditure is justly distributed and the retrenchments now in contemplation are put into effect, then, according to the rough calculation we have made, the present deficit in the internal administration would drop from 56 lakhs to 20 lakhs a year with some prospect of ultimate extinction.'

Sir, there is nothing, therefore, in any of the arguments that have been advanced on the score of the Province not being self-supporting.

And now, Sir, I come to the Hon'ble Member who represents the Government. He expressed the view on behalf of the Government that the question of re-amalgamation was dead; the cry was dead and buried; and he said that even the eloquence of the Leader of the Swaraj Party cannot breathe life into those dead bones. But having negatived the re-amalgamation he gave us no further information on the subject. He himself stands committed to this Report. He said that if he were asked today to put his signature he would do this: 'The highlights might be softened'; but he did not tell us how they would be softened. 'The shadows might possibly be deepened'; but he did not tell us how they would be deepened. 'But the outline would remain the same.' Well, Sir, I am waiting to hear from him what is going to happen to the highlights and what is going to happen to the shadows. Sir, the Hon'ble Member, it seems, has

been brought up in what is known as the Foreign and Political Department, and not in vain. In that department one probably receives a better training for diplomacy than in any other department in the world. He made a speech and a long speech, and we heard him with rapt attention, every moment waiting for some definite announcement or declaration; but at the end of it he wound up by saying:

> 'There is one other difficulty, which I have still to mention. It is of course ever present to us all this evening, and that is the communal question. Well, as I suggested the other day in answer to a question, I think, by my friend Mr. Jinnah, Government have been awaiting this debate with great interest and great attention. And it is with great interest and great attention that Government will follow it and its actions and reactions in the Press, in the Frontier, and in India at large.'

Sir, does he expect us here again to be completely unanimous on this question? (*Sir Denys Bray*: "*No.*") What does he expect us to do then? Does he expect us to be wrestling on the floor of this House? What does he want this House to show him in the course of this debate? Sir, I hope that we have shown the Government, and we have shown the world at large, that we have discussed this question on its merits, that individual passions are bound to be roused and individual temperaments must assert themselves in any legislature. Think back of your own Parliaments. Remember the speeches of Gladstone about the atrocities in Bulgaria—a great man and a greater man than my honourable friend, Pandit Madan Mohan Malaviya. How often was he not led away in fury, in rage? Why blame my friend here? He feels it. That is his feeling, that is his temperament. But, Sir, because you have an individual here or an individual there, is that going to be the final test? I ask the Government once again, do you wish to divest yourself of your responsibility? You agreed to appoint this Committee. My honourable friend Sir Sivaswamy Aiyer, who is now not here, was the cause of this Committee being appointed, and this Committee has given its verdict, and two of its official

members are still of the same opinion, not only Sir Denys Bray, but even the present Chief Commissioner—I believe he was there, I do not know whether he is there now—I mean Mr. Bolton; both these gentlemen signed the majority Report. Now, what did Mr. Bolton say in answer to the deputation which waited on him not very long ago, on the 25th of November, 1925? What did he say? He said:

> 'The first question you raise is that of Reforms. You are aware that I signed the majority Report of the Frontier Inquiry Committee, and I adhere to the views I then expressed.'

It was as late as the 25th of November, 1925. He did not talk about the highlights or the shadows. He has not been in the Foreign Department. He is only a member of the Indian Civil Service, I suppose. (*A Member*: *"A machine."*) But he was there as a ruler, and not like those who are sitting on the Treasury Benches. There is a great difference. Sir, I, therefore, want the Government not to delay in giving a definite answer, because it will lead to no good. On the contrary, I think the position of Government is likely to be completely misunderstood, and might lead to results which we least desire on either side. It is likely to make the Muhammadans feel, as was pointed out by friend Raja Ghazanfar Ali Khan, whom I heartily congratulate upon his maiden speech, it is likely to make the Muhammadans feel, that it is the Hindu opposition based on the sole plea of Hindu-Muslim strife in that Province that is coming in the way of their getting any advance, and the Hindus will be encouraged to feel that, as they are going on with this agitation and passing resolutions after resolutions, the Government are changing their attitude (*A Member*: *"Afraid"*), and are afraid and will not grant any reforms to the Frontier. (*A Member*: *"What is sauce for the goose is not sauce for the gander."*) This is an impression which is fraught with danger. I am only pointing out that if you do not wish to take any step on the majority Report, if you do not wish to do anything, say so without delay. If, on the other hand, you wish to do something, then I appeal to you most earnestly to make your declaration without delay.

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XI

THE SARDA BILL

"Marriage law had nothing to do with religion as such."—Jinnah

The Child Marriage Restraint Bill, popularly known, after the name of its Mover (Rai Sahib Harbilas Sarda), as Sarda Bill, was introduced in the Legislative Assembly of India in 1927 and was finally adopted on the 23rd of September, 1929.

In many ways, this legislative measure may be considered a landmark in the movement and struggle of the progressive elements in the sub-continent for social reform, in general, and the emancipation of women in particular. The long debate on this Bill would not only be of interest to a student of this aspect of the sub-continent's history, but should also be a source of considerable inspiration and guidance for social reformers and public representatives in Pakistan, India, and Bangladesh, because the issues of a general nature, which were then agitated, do not appear to have been finally settled in any of these countries.

Because of the stand taken by Mr. Jinnah on this Bill, the discussion on the Bill and its outcome are of peculiar relevance and importance to Pakistan, where many reforms dealing with family laws are under active consideration of the politicians and social workers of the country. Recently a high-powered and representative Committee, headed by the Attorney General of the country, was appointed by the Pakistan Government with the object of making proposals regarding reforms in the existing laws that deal with family matters, especially the rights of women. Some of the recommendations of the Committee have led to quite a heated controversy in Pakistan. Significantly, the main objection to the

proposals contained in the Report does not relate to the merits of the proposals as such, but it is contended that recommendations like giving a right of divorce (*khula*) to women, raising of the marriage age and giving to the wife a right to have a small share in the property of the husband, where the marital relationship has lasted for a period of at least five years and the divorce has proceeded from the husband, are all against the laws of *Shariat.*

Now if we accept that Mr. Jinnah's stand on questions relating to incidents of a marriage between Muslims was a correct exposition of Islamic law on this subject, then the whole controversy is taken out of the field of theology and dogma and proposals regarding any reform in the existing family laws in a Muslim society would be examined on their merits, the simple question being whether a proposed change would lead to an amelioration and betterment of the life of the people. Because if we unreservedly accept that "marriage is a contract according to Mohammadan law, pure and simple" and that "marriage law had nothing to do with religion as such", then there will be no legal bar to including a wife's right of divorce, etc., as a part of the terms of a contract of marriage. Conditions of this nature may be made specific terms of a particular marriage contract as well as an elected legislature of the people can declare that these conditions would, by law, be taken as an essential part of all contracts of marriage.

The Child Marriage Restraint Bill remained pending in the Central Legislature of India for two years and, but for rather a rare combination of some fortunate circumstances, it is doubtful if it could at all have been made into a law.

The motion for consideration was made on the 29th of January, 1929, and, on that day, the House accepted an amendment, moved by Mr. M. K. Acharya, who was to become a champion of the opposition to the proposed legislation. By virtue of this amendment the consideration of the Bill was deferred till the Report of the Age of Consent Committee was made available to the Members of the Assembly. This Committee of the House had been appointed to examine and

make a recommendation on the question whether the minimum age fixed by the penal law of the country after which intercourse by a man with his wife, without her consent, does not amount to an offence of rape, should be raised.

After the Report of the Age of Consent Committee had been submitted, the Sarda Bill was again taken into consideration on the 4th of September, 1929, and a long debate, spread over six days, ensued. One may have a fair idea of the lengthy debate from the fact that it took 366 pages of the book containing the official reports of the Assembly.

Outside the Legislature there arose, throughout the country, a great agitation against the Bill. The proposed reform was attacked on many grounds, but the principal objection was that it was against the religious laws of both the Hindus and the Muslims. Of course, the question whether the Sarda Bill was against the sacred laws of Islam arose much later, because the Bill, as originally presented, and for a considerable period when it remained pending, was intended to be applied only to the Hindus. There was some counter agitation in favour of the reform also, but compared with the opposition, the support was insignificant.

On the 4th of September, that is, just before the discussion on the Bill was to commence, the Home Member told the House that the Petitions Committee had received as many as 707 representations and petitions against the Bill and these petitions were signed by 72,725 persons, while the number of representations in support of the legislation was only 4 and the number of signatories to them just 10. This would show how strong the opposition was. But then this is generally true in all matters of this nature. Unfortunately the reactionaries have always been able to make a louder noise, especially when the cry of 'Religion in Danger' is easy to raise.

Thus the Members were placed under a great strain and pressure of what was called public opinion against the reform proposed in the Sarda Bill. Apart from the representations received by the Petitions Committee, the Members were continuously being pestered with resolutions, letters and postcards,

purporting to have been sent by leaders of public opinion, all demanding that the Bill be rejected.

In the House the opponents of the Bill, again and again, reminded their colleagues, who had decided to support it, that the latter had no mandate from their electors to pass this measure. Mr. Jinnah's answer to this was a unique example of a forthright commitment to a cause, and courage and confidence with which a politician should support what he believes to be good for the people.

What Mr. Jinnah said about public opinion at that time would appear to be quite true even now in respect of countries like Pakistan and India. It should also be the duty of a politician to educate and lead the people and not always merely to follow them. "Because, public opinion is not so fully developed in this country and it can be created in the name of religion even where religion has nothing to do with the matter" which may be before us. Mr. Jinnah had the confidence that the people of his constituency would appreciate and approve his stand on the Sarda Bill, but "if my constituency is so backward as to disapprove of a measure like this, then I say, the clearest duty on my part would be to say to my constituency, you had better ask somebody else to represent you."

During the period of about two years from its introduction to the day when it was finally passed, the Bill underwent many changes which were of a basic nature. The more important points to notice are two. Firstly, in its original form it was to be a civil law, that is, marriage of a child below a certain age was to be declared invalid. Secondly, it was to apply only to the Hindus. Indeed the name of the Bill was "The Hindu Child Marriage Bill" and this name was changed to "The Child Marriage Restraint Bill" at a very late stage of the debate and a short time before it was to be put to vote.

If the first change had not been made, the Bill, even if it was passed, which was doubtful, would have been hardly of any significance. The second change is of an equal, if not greater importance. If the Bill was not made applicable to all the

communities in India and, at the same time, it was to be a penal legislation, then the Government would certainly not have lent their support to the proposed law, because that would have meant helping in the making of a criminal law which discriminated between citizens on the basis of religion. And the composition of the Indian Legislature at that time was such that without the support of the Government and the nominated Members, who generally voted with the Government, there were hardly any chances of the enactment of the Sarda Bill.

The Muslim public opinion, led by the orthodox Ulema, was strongly against the proposal that the Muslims should also be governed by this law. In matters of *fiqh*, the Ulema belonging to the various sects and schools had many differences amongst themselves, but it appeared that they were agreed on this one point, that *Shariat* did not permit the fixing of a minimum age for marriage. Their stand was that a legal guardian could always contract a marriage on behalf of his ward, no matter how tender in age the child may be.

It was also contended by these Ulema that a law of the nature of the Sarda Bill was not needed for the Muslims, because, according to their claim, the existing rule of 'option of puberty', which was a part of the Muslim laws of marriage, was enough to protect the interests of minors. As a matter of fact, this assertion is only half-true. The correct position is that, according to the strict orthodox *fiqh*, if a minor girl has been given away in marriage by her father or paternal grandfather, she has no option to repudiate the marriage when she attains the age of puberty. Since in most of the cases of minors, the guardian is the father of the girl, therefore, in practice, it will be very seldom that a girl could avail of the right of 'option of puberty'. This is apart from the other difficulties in the way of an effective exercise of this right. The girls may have to go to Court to establish this right and, possibly, to meet a defence by the husband that the marriage has already been consummated.

The rule on this branch of *fiqh* is, of course, the same

for minors of the male sex. But it is of no material disadvantage to them, because a man can always divorce his wife.

The orthodox Hindu law was greatly more stringent and illiberal as far as marriage of females was concerned. Unlike the Muslim *fiqh*, according to the religious law of the Hindus, marriage of a girl at a tender age, and in any case before she had reached the age when she was physically capable of becoming a wife, was not only permissible but obligatory. Marriage was not a contract. It was a sacrament and a ritual. On the part of a Hindu father or other guardian of the girl child it was a *Dan*, an act of charity and great piety that he should give her away in marriage before she became sex-conscious. This doctrine was considered to be based on the laws contained in the *Shastras* and other sacred literature of the Hindu community in India.

This would show what formidable odds the progressives in the Assembly had to meet in order to be able to bring about the social reform aimed at prohibiting child marriage. Happily, there were a few Members in the House who were qualified to speak on the Hindu Law and the Muslim Law, from a religious angle, and thus to meet the orthodoxy on its own ground. No one can deny the valuable contribution made by these Members, when they made an effort to re-interpret the original sources and place before the House authoritative texts of the Scriptures which were opposed to the institution of child marriage.

But the question is, can the gordian knot of religious obscurantism, that stands in the way of social reform and eradication of social and economic evils, be broken merely by relying on the existing schools of theology, even if they are comparatively less illiberal? It appears to be doubtful.

In our view the only course which can lead to a successful evolution of progressive thought in this field is the one suggested by Mr. Jinnah in his speech. We should make a deeper and philosophical study of the basic principles of religion and what are the institutions which are no part of religion as such but have, through custom, usage and histo-

rical and local factors, come to be considered as a part of religion. In the words of Mr. Jinnah, "whether certain practices have any sanction, divine or religious, or not, usages and customs grow up, and when any social reform is suggested which goes to destroy the usages and the practices to which the people are used and upon which they have looked as semi-religious usages and practices, it is always known all over the world that those people who have got deep sentiments. deep convictions, strong opinions, always resent, and they believe that it is destroying the very root of their social life or religion".

As mentioned earlier, the Bill was originally not meant to be applied to the Muslims. Apart from the fact that the Islamic law on the subject of child marriage was not as harsh as the Hindu Law, it was generally considered that the incidence of this evil in the Muslim community was negligible. But because of the evidence collected on this question, through the various agencies, it was revealed that the practice of child marriage amongst Muslims in the various parts of the country did exist in quite a considerable magnitude, though it was by no means as prevalent as in the Hindu society. But this was not the reason why Mr. Jinnah gave his whole-hearted support to the Sarda Bill. At a much earlier period of his career in the Indian Legislature he had made his stand on such issues clear beyond any doubt. In his speech on the Hindu Marriage Bill, he had unequivocally stated that he stood for social reform and eradication of all forms of repression. even if the matter did not concern the Muslims.

Any one carefully perusing the proceedings of the debate on this Bill would come to the conclusion that it was mainly because of the support of Mr. Jinnah that it became possible for the Sarda Bill to be passed. The most difficult task for Mr. Jinnah was to persuade the Muslim group in the Assembly to agree to support the Bill, particularly when a majority of this group had, in a private meeting, committed themselves to oppose the Bill. Most of his efforts, it would appear, must have been made outside the House and behind

the scene, because not all the Members came to know till a very late stage of the debate as to who was responsible for, as Maulvi Mohammad Shafee Daoodi chose to say, 'dragging in' the Muslims. Only when the question was persistently raised did the House learn that it was on the proposal of Mr. Jinnah that the Select Committee had decided to include the Muslim community within the purview of the Bill. In view of this, it would be no exaggeration to say that Mr. Jinnah assumed the role of a co-sponsor of the Sarda Bill.

If we take into consideration the strong public agitation that had been created in the Muslim masses throughout the country against the Bill, this decision on the part of Mr. Jinnah was an act of such great courage that it is difficult to find its parallel amongst his contemporaries in the Indian politics. Some of the excerpts out of the speeches of Members who belonged to the Ulema class would show with what venom the Muslim Members who took a liberal stand were attacked. Maulana Ghaznavi went to the extent of saying that Mr. Yusaf Imam was "only a Muslim by name", because out of the Muslim Members on the Select Committee he was the one who had given an opinion that the Bill should apply to the Muslims also. It is not difficult to imagine how much of his political career was put at stake by Mr. Jinnah when he decided not only to join the supporters of this legislative measure but to take upon himself the whole of the responsibility on behalf of the Mussalmans of India in support of the Bill.

If we examine the Bill itself we would find that it was hardly a revolutionary measure of reform. Indeed it could be described as the mildest of the penal laws that were brought on the Statute Book during that period of Indian history. The maximum punishment provided for an infringement of the law was simple imprisonment of one month or fine. Unlike other offences, there was to be no imprisonment in default of payment of fine. More than one defences of a special nature were made available to the accused. Cognizance could be taken only on complaint, if made within one year of the taking place of a child marriage. The court could dismiss the

complaint without summoning the accused, but in order to proceed against him, a preliminary enquiry by a Magistrate was made obligatory. No woman was to be punished with imprisonment under this law. Finally, there was no provision which could have the effect of invalidating a child marriage.

Both the progressives and the conservatives in the House were aware of these peculiar features of the proposed law. Then how is it that the Sarda Bill became such a major issue in the Indian politics? The answer to this is that a question of a general importance came to be involved in the Child Marriage Restraint Bill. It was a trial of strength between the liberals and the obscurantists and both were conscious of what was at stake.

Mr. Jinnah recognised that the Bill before the Assembly was "after all a small move, it is not going to be the end of all our troubles or evils that exist, nor is it going to be our salvation. But it is only the beginning."

Mr. Jinnah proved to be right in his assessment of the implications of the Sarda Bill and how it was to affect the future course of social reform in India, particularly the social and economic emancipation of women. It was only after the passage of the Child Marriage Restraint Bill in 1929, that laws like the N.F.W.P. Shariat Act (1935), The Hindu Women's Right to Property Act (1937) and the Dissolution of Muslim Marriages Act (1939) were passed by the Legislatures in India.

A word about the Government support to the Sarda Bill may be said here. It was a private Member's Bill dealing with a social reform, and the policy of the British rulers in India had hitherto been one of non-intervention in matters of this nature. Moreover, the opposition to the Bill had come from the orthodox and the conservative and these were the elements who were loyal to the Government and contented with the British rule. In the words of Mr. Jinnah, "in the past the Government policy was: 'We have enough trouble. We have got the agitators who are making our lives miserable already. Why should we undertake a measure which will make our loyal

subjects who always support us, who look upon us as *ma-baps* ——the orthodox who are quite content and satisfied——why should we undertake this extra trouble, this extra burden upon our heads' "? Mr. Jinnah recalled this previous policy of the British Indian Government and was happy to see that a healthy change had begun in the approach of the British rulers to the social problems of their subjects. He magnanimously complimented the Government on this change of policy.

Even while the Sarda Bill was being debated, the Home Member was to introduce, on the 9th of September, 1929, a most illiberal and repressive law proposing an important change in one part of the Criminal Procedure. If the debates on the two Bills, namely, the Sarda Bill and the Code of Criminal Procedure (Amendment) Bill, are examined together, we will find a remarkable evidence of Mr. Jinnah's progressive thought in all fields and his total commitment to principles regardless of any other considerations. As mentioned above, Mr. Jinnah paid a tribute to the Government for their support of the Sarda Bill, but when the Bill on the Criminal Procedure came up, he was amongst the foremost to attack the Government and strongly to oppose the proposed law. He was reminded by a European Member of the words of appreciation that he had used for the Government during his speech on the Sarda Bill and an appeal was made that he should now support the Government. Mr. Jinnah's reply was that his appreciation of the Government policy was only in respect of the Sarda Bill and he stuck to what he had said in that connection. It would be of interest to mention that his speech in which be appreciated the Government stand on the Sarda Bill was made on the 11th of September and on the very next day, i.e., 12th of September, he made a hard-hitting speech in strong condemnation of the Government for their having brought before the House the Code of Criminal Procedure (Amendment) Bill, which is the subject of the next chapter.

The longest part of the debate on this Bill was held on the motion for consideration, and the amendment to it, moved by Mr. Acharya, in which it was proposed to postpone the

consideration of the measure so that the Report of the Age of Consent Committee could be properly studied and assessed.

Mr. Jinnah spoke only on this motion, but he dealt with all the important aspects of the controversy, including the proposal to defer the consideration of the Bill, which he opposed, because he saw no point in further postponing the issue. Mr. Jinnah thought that the only result of a postponement would be that opposition to the Bill would be further strengthened and, because of this, the Government might be frightened and withdraw its support to the Bill.

Mr. Jinnah was absolutely correct in his assessment. As the debate proceeded and a discussion on the various clauses of the Bill was taken up, it became quite clear that the object of the opponents to the Bill was somehow to get the passage of the Bill deferred to the next session of the Assembly. They hoped that when the Members went back to their constituencies the public opinion, which the obscurantists had engineered, would have become so strong against the Bill that most of the supporters of the reform, a majority of whom were amongst the category of waverers and whose views, unlike for instance, those of Mr. Jinnah and Pandit Motilal Nehru, were not settled and based on fundamental principles, would change their mind.

Numerous amendments were moved to the various clauses of the Bill. They all came from the opponents of the Bill and in some cases it was quite obvious that the object was only to prolong the discussion so that the final vote on the Bill could not be taken. It is not necessary to go into this matter in any detail. However, one or two interesting features of the amendments may be noticed. A joint effort was made by the Hindu and the Muslim conservatives that the minimum age of marriage for girls be reduced from 14 years, as proposed in the Bill, to 11 or 12 or 13 years. This would mean that, by their conduct, the orthodox Members showed agreement with Mr. Jinnah's stand that religion as such had nothing to do with marriage laws. For, if it was against religion to fix a minimum

age for marriage, then what difference would it make whether the age that was laid down was 11 or 12 or 13? All would be equally an infringement of the religious laws as interpreted by the opponents of the Bill.

Secondly, the obscurantist and reactionary group in the Assembly made it their common cause that at least some communities may be excluded from the operation of the Bill. At a very late stage of the debate an amendment was brought proposing that the Bill should not apply to the Muslims. Of course the amendment was negatived, but a curious part of this was that not only a sizeable number of Muslim Members voted for the amendment, but the non-Muslim opponents also sided with them.

Mr. Jinnah was very happy over the development of a measure of Hindu-Muslim unity in respect of the Child Marriage Restraint Bill. This, he hoped, might lead to a much wider and more firm unity amongst the peoples of India, which could so greatly hasten the achievement of freedom from the foreign rule. He is quoted to have said, in a public address in 1924, that "Swaraj is interchangeable with Hindu-Muslim unity."

And this was not a transitory phase of Mr. Jinnah's political thought. Many years after that, on the 11th of August, 1947, in his presidential address to the first Constituent Assembly of Pakistan, when he made an assessment of the recent past history of India and the basic cause of its domination by a foreign Power, he referred to the lack of unity among the two communities:

> "Indeed, if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free peoples long ago. No power can rule another nation, and especially a nation of 400 millions souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have continued its hold on you for any length of time but for this."

A brief summary of the debate on the amendment moved

by Mr. Acharya can give an indication of the general mood of the Members on the Bill.

Speaking on his amendment, Mr. Acharya said: "I think every Hindu, or for the matter of that, every human being, will accept the truth of this statement, that whenever doubts arise, we must go to those who are authorities on the subject; ask them, sit at their feet, and learn from them how to find a solution for our troubles...I hope Government will also beware of the fact that, after all, they are not the makers of India's destiny. India's destiny is in the hands of her own people. If the Government, owing to pressure brought to bear on them whether from home or elsewhere, decide to thrust this legislation on us, a time will come when some greater pressure will sweep this Government away. Let them beware, therefore; let them take a lesson from Afghanistan."

Mr. Amar Nath Dutt asked the Government not to mislead the people. "The Government is trying to play the role of a Ram Mohan Roy and a Rande," he said, "to divert the attention of the politically minded people from the life works of Surendranath Bannerjee, Dadabhai Naoroji and Bal Gangadhar Tilak, which is the legitimate sphere of their activity. True nationalists should beware of this and should not join in the chorus of siren songs, sung through one of their own organs, who was in their service, and who still receives their pension. Are we to believe that a Government which deports and imprisons men like Tilak, Gandhi, Lala Lajpat Rai, Aurobindo Ghose, and others, and is at the present moment callous to the suffering of the hunger-strikers at Lahore, has suddenly developed a great desire for the well-being of our community?"

Mr. M. S. Sesha Ayyangar said the Bill would inflict untold miseries upon millions of people, all for a fashionable fad of social reformers. To say that the human species was unfit for matrimony before 18 and 14 was a mere fad. He quoted Ellen Kay, "a prominent leader of the feminine movement, advocating free love, free divorce and motherhood without marriage" as having observed:

"Sexual morality is impossible without early marriage.

Postponement leads to prostitution, spread of venereal diseases and the evils of self-abuse and abstinence. In early marriage only the highest form of love is possible."

The Home Member, Sir James Crerar, reaffirmed "the most cordial sympathy and the strongest support of Government" for the measure.

Mr. Abdul Haye, from East Punjab, supported Mr. Acharya's amendment and claimed that almost all the "Mussalman Members of this Assembly have decided to adopt this course for certain reasons". The difficulty, he said, was "that we feel that somehow or other Mussalman public opinion has not sufficiently clarified itself to enable us to arrive at a definite decision".

Mr. T. A. K. Shervani, from the United Provinces, interrupted to challenge the statement that almost all the Mussalmans were against the Bill.

Dr. L. K. Hyder, from Agra Division, wished to support the Bill and "to oppose strongly, clearly, without reservation or equivocation, all amendments, all efforts which will destroy the little social good that is embodied in that Bill". He said there were some gentlemen who claimed that it was not at all desirable that the State should interfere with religion, and added: "I will say this: that many of the things which come up before us in this House deal with the facts of social life and with social phenomena, and I ask gentlemen to consider whether they would subscribe to this doctrine that the State cannot interfere in a matter of this kind. If that were so, then a large part of those things which would increase the well-being of the people of this country would have to lie outside and would not come up before this House.

"......We require legislation in order that the spirit of obscurantism may be removed from our people. Well, Sir, there are a number of other things also included in the qualitative aspect of the population question. You will have to consider in the future, what is it that you want. Quantity or quality?"

Mr. Price, representing the Europeans, asked the House to look at the evidence given in Karachi about child wives:

"A child wife of 11½ years of age is raped by her 'husband', a man of 32 years, gravely injured and requiring hospital attention! A child wife between the age of 11 and 12 years raped by her 'husband' (save the mark!), a man of 28, involving her death, and there are half a dozen similar cases lately tried in the Sind courts. All the world knows that for every one such case brought to justice there are 50 cases where the child's sufferings go unavenged." Addressing those Muslim Members who wanted to delay the Bill, he said: "Sir, it is the glory of their Holy Prophet (on whom be peace) that he not only swept away idols and priests and gave his people direct access through prayer to Allah, the Compassionate, the Merciful, but that he restored most generously to woman the rights to her person and her property, of which the hardheartedness of man had deprived her."

Mr. K. C. Roy welcomed the speech by Dr. Hyder, and said: "Dr. Hyder comes from the University of Aligarh, the seat of Muslim learning and culture. The message that he has given to this House will radiate from here to all stations in India and bring home to the youth of India a new message of hope and charity. It will also rally most of the Muslim waverers in support of this Bill. This is a hope which I fervently express."

Maulvi Mohammad Shafee Daoodi, from Tirhut, said he had never heard that there was such an evil as child marriage, and that this should be eradicated. If legislation was considered to be necessary by the Hindu fellow-countrymen for the removal of this evil from their society, they should not make a universal law for the whole of India. He wanted to know how the Mussalmans had been dragged into the Bill which was meant originally for the Hindus.

He maintained that the Mussalmans had a complete law of their own so far as marriage relationships were concerned. For a child, when she was married against her will, there was a provision for her to repudiate the marriage when she attained puberty. There were traditions of the Prophet that a Mussalman should not marry a girl unless she understands what

marriage is. According to him the Mussalmans as a community did not require any legislation whatsoever on this question. If the Bill was adopted it would be a very cruel encroachment on the rights of the Mussalmans. He asked the House not to be misled by Dr. Hyder's remarks, and reminded the Member from Aligarh that he was present in the Council only because he professed Islam.

The Revd. J. C. Chatterjee, a nominated Indian Christian, strongly opposed Mr. Acharya's amendment and supported the Bill in its entirety. He referred to the legislation for the abolition of *sati.* When that legislation was under consideration a memorial was presented to the Governor-General on which the thumb marks of 50,000 women were placed. These women had pleaded that if the law against *sati* was passed, if *sati* was prohibited, then their religion would quiver and that they would commit *satyagraha.* However, no *satyagraha* took place. According to him the Bill under consideration was much more important than the one on the *sati* because in the case of *sati,* it was one in ten thousand or even one in a million women who became a *sati,* whereas in the case of child marriage it was a long drawn out *sati.*

Pandit Madan Mohan Malaviya recalled that he had supported the principle of the Bill when it was first introduced and he still adhered to that view. He did not want the Bill to be dropped, only he justified Mr. Acharya's amendment that consideration of the Bill be deferred. He then proceeded to emphasise that the Hindus had for centuries followed the system of marrying girls at an early age, and the idea was that "before they grew into womanhood, before they reached adolescence, they should know that there was one particular individual to whom they had been wedded and that all their thoughts should centre round him."

Mian Mohammad Shah Nawaz, from West Central Punjab, spoke in support of the motion that the Bill to regulate the marriage of children, as reported by the Select Committee, which would make it applicable to all communities, be taken into consideration. He recalled that before he joined the Age

of Consent Committee he thought that the evil of early marriage was not so great as it was represented to be. But now he had seen things with his own eyes, heard the evidence with his ears. He said that the evidence presented before the Committee showed that whenever a girl of 10 to 13 was married to a boy of 18, in most cases the marrige was consummated before the girl reached the age of puberty. When he mentioned that the practice was widespread in Bengal, he was interrupted by many Members. Referring to the Muslims, he asserted that there was nothing in the Holy Book of the Muslims which was inconsistent with the provisions of the Bill. The opinion among the Ulema was so very conflicting. Khawaja Hasan Nizami had said that the proposed legislation, which would penalise marriages of girls below 14, was most beneficial to the Muhammadans and must be passed. The same were the opinions of Maulana Suleman Nadvi and Maulana Mohammed Ali, who had translated the Quran. Two witnesses from the United Provinces, representing the Deoband school, had said the legislation could be initiated by a Muhammadan king, but a foreign government could not make such a law. In the circumstances of this country and the Muslim society, Mian Shah Nawaz thought, the Egyptian law of marriage was the best guide. He said if the House could not do justice to the women, the Indians were not fit to claim self-government.

Mr. M. R. Jayakar began by pointing out that in no civilised country had it been recognised that legislation should only be initiated upon clear evidence of favourable public opinion. All measures of reform, even in advanced countries, had often to be initiated by the few progressives, who thought in advance of the times. He said it was too late to argue that the Council had no power to interfere in matters of religion. Such a plea would have been advanced perhaps in 1860. Since then he could recall several instances when Legislatures had interfered with even more deeply cherished sentiments of the Hindu community. He said he would be sorry if the House foreswore its claim to be the sole judge of what was right and what was wrong for the country. "The House should say to itself, the choice between progress and conservatism is before

us, we will choose rightly; we are not going to be frightened by orthodox sentiments," he said. Finally he called upon the Muslim Members to make up their minds. The hope that, given more time, they would be able to bring their orthodox Ulema to their view, was as vain as the Pandit's optimism of getting the Hindu Pandits round.

Nawab Sir Sahibzada Abdul Qaiyum, from North-West Frontier Province, said he was not an authority to dwell on the religious aspect of the Bill. He said it was his impression that the Muslim Members were unanimously of the view that further consideration of the Bill be put off. He also wanted to know how the legislation had been made applicable to Mussalmans. A Muslim Member intervened to say that Mr. Jayakar had already disclosed that Mr. Jinnah was responsible for this. Sahibzada Abdul Qaiyum said that if the Bill was eventually taken up he might vote for it.

Mr. A. H. Ghaznavi, from Dacca, opposed the application of the proposed law to the Muslims. He said the Select Committee had thrown out the original Bill and evolved another Bill which was circulated for eliciting public opinion. In the second Select Committee of 18 Members, only three were Muslims, and two of them (Maulvi Muhammad Yaqub and Muhammad Rafique) had opposed the extension of the Bill to the Muslim community. As for the third, Mr. Yusuf Imam, according to Mr. Ghaznavi, he was a Muslim by name only.

Mr. Ghaznavi disclosed that 29 Members had signed a memorandum to the Home Member, opposing the Bill, and these Members were; Sirijut Dhirendra Kanta Lahiri Chaudhry, Mr. Ismail Khan, Mr. Abdul Qadir Siddiqi, Maulvi Abdul Matin Chaudhury, Mr. Fazal Ibrahim Rahimtulla, Nawabzada Ashrafuddin Ahmad, Nawab Sir Sahibzada Abdul Qaiyum, Mr. Duraiswami Aiyangar, Haji Abdoola Haroon, Haji Choudhury Mohammad Ismail Khan, Mr. W. M. P. Ghulam Kadir Khan Dakhan, Mr. Illahibakhsh Bhutto, Mr. Aney, Lieutenant Muhammad Nawaz Khan, Dr. Suhrawardy, Mr. Anwar-ul-Azim, Rai Bahadur Tarit Bhushan Roy,

Nawab Sir Zulfiqar Ali Khan, Mr. M. K. Acharya, Mr. Muhammad Rafique, Maulvi Sayyid Murtuza Saheb Bahadur, Mr. Abdul Latif Sahib Farooki, Khan Bahadur Syed Rajan Baksh Shah, Maulvi Badi-uz-Zaman, Maulvi Muhammad Shafee Daoodi, Mr. Sesha Ayyangar, Mr. Belvi, Mr. A. H. Ghaznavi and Mian Mohammad Shah Nawaz.

He wondered as to what had happened to Mian Shah Nawaz so much so that he had become a supporter of the measure. Then he referred to a *fatwa* signed by 74 *Ulema* from all over India who had condemned the Bill on the ground that it infringed the Muhammadan personal law.

Mr. T. A. K. Shervani challenged the contention that the Muslim Members were opposed to the Bill. He declared that the Bill was in exact accord with the true principles of the Islamic law.

Referring to the plea that *fiqh* could be changed only by a Muhammadan king, Mr. Shervani said that he did not endorse that view because if he did so he would be in awful difficulties. There were only two ways open to the Muslims, he said; either to leave Islamic law at the mercy of a Judge or a bench of Judges or bring it within the jurisdiction of the Legislature. The latter course was better as the Legislature included many Muslims who could hold a thorough discussion on any proposal.

Mr. Muhammad Yamin Khan from the United Provinces, supported the move to postpone consideration of the Bill.

Pandit Motilal Nehru said that he too had received numerous representations and opinions from the public but had not cared to read them even. He thought the controversy on the question was silly. Child marriage was a wicked, diabolical custom, he said, and the practice was so obviously inhuman that anybody who called himself a man would naturally be staggered at what he saw with his own eyes. He said he would have liked to fix a higher age for the marriage of girls

but he supported the proposal to fix the age at 14 as a first step. If even this was not accepted, "we shall go into deeper depths of degradation than we can possibly imagine in the eyes of the other nations of the world."

Finally Mr. Acharya's amendment was defeated as also the attempts to exclude the Muslims from the operation of the Bill.

We now reproduce Mr. Jinnah's speech on this Bill:

Sir, the first and foremost question that I put to myself as a Member of this Legislature is whether child marriage is an evil in this country or not; is it a crying evil or not? Is it human that thousands and millions of girls should be married at a very tender age which must sap their womanhood? Sir, I do not think, whatever may be the controversy on this point, on the plea of humanity, that there is a single Member in this House, who can contemplate with equanimity and would not deplore and condemn the grave evil and the inhuman practices which are daily taking place in this country. Is it or is it not a fact? Sir, I entirely agree with my friend Mr. Shah Nawaz. I was myself unaware of the extent and the degree of evil that existed among the Mussalmans.

When the debate was going on, on previous occasions, my friend Pandit Malaviya corrected me because I happened to say that so far as the Mussalmans are concerned, the evil did not exist to such an extent. And when he corrected me I was taken aback, but I had not the the facts and figures, which we have since obtained. Therefore, although in my Presidency the evil does not exist to the extent that we now know it did exist, yet there are other parts of India where this evil does exist. Now, Sir, if that is a fact and I take it that it is an established fact, then the next question that we have to consider is this. Are we going to tackle this horrible evil? I ask my friend Mr. Ghaznavi to answer this. Are we precluded from dealing with this evil? Sir, I do not pretend to be an *'Alim*, and I am not one. Nor do I pretend to be an authority on theology. But I do know one thing, that during the last 30 years of my fairly active practice in Bombay, I always understood that marriage law had nothing to do with religion as such; that marriage was a contract according to Muhammadan Law, pure and simple. Will Hon'ble Members point out to me a text of which I am not aware? I repeat that marriage is a contract according to Muhammadan Law. Can that be challenged? If anybody contradicts me on that, he has yet to learn the Muhammadan Law. But the question is this, whether there is any text

which makes it obligatory on Mussalmans that they should get their daughters married before the age of 14. (*Some Members*: *"No, No"*.) There is no text. On the contrary, as far as I have been able to understand—and here Maulvi Muhammad Yakub supports the proposition which I am going to place before the House, in his very excellent note —on the contrary, the Muhammadan Law defines the age of puberty as 14. (*Some Members*: *"fifteen."*) I am not taking the text, I am taking now the Muhammadan Law as it is written by the Anglo-Indian text-writers. (*A Member*: *"fifteen."*) I beg to differ. The age of puberty is 14. However, if it is 15, it supports me more. Very well, I will accept that if you like because it supports me more. Now, what does Maulvi Muhammad Yakub say?

> "Islam thus generally seems to favour marriages after the age of discretion, but it sometimes happens that special circumstances and the well-being of a girl herself make it imperative that her marriage should be performed at an early age. Islam, therefore, did not fix any age for marriage and marriages of minor boys and girls were kept permissible".

Therefore, I am not convinced that this Bill in any way militates against the rule of civil laws applicable to marriage amongst Mussalmans. I agree with my Hon'ble friend over there—I congratulate him upon his maiden speech. I cannot believe that there can be a divine sanction for such evil practices as are prevailing, and that we should, for a single minute, give our sanction to the continuance of these evil practices any longer. How can there be such a divine sanction to this cruel, horrible, disgraceful, inhuman practice that is prevailing in India?

Sir, I am convinced in my mind that there is nothing in the Quran, there is nothing in Islam which prevents us from destroying this evil. If we can do it today, do not wait till tomorrow. I fully recognise the orthodox opinion. I fully appreciate the orthodox sentiments, the orthodox feelings both of the Mussalmans and of the Hindus. Sir, whether certain practices have any sanction, divine or religious, or

not, usages and customs grow up, and when any social reform is suggested which goes to destroy the usages and the practices to which the people are used and upon which they have looked as semi-religious usages and practices, it is always known all over the world that those people who have got deep sentiments, deep convictions, strong opinions, always resent, and they believe that it is destroying the very root of their social life or religion. Always the social reformer is face to face with this orthodox opinion having behind it this conviction, this sentiment, this feeling which is perfectly understandable and to some extent legitimate. But are we to be dragged down by this section for whom we have respect, whose feelings we appreciate, whose sentiments we regard; are we to be dragged down and are we to be prevented in the march of progress, in the name of humanity, I ask you?

And, Sir, as far as my own constituency is concerned, that is, Bombay, I have no mandate from them. This measure has been before this House for a long time, this measure certainly has been discussed in the Press and on the platform; but my constituency has not given me any mandate whatsoever, of any kind, and, therefore, perhaps I am very happy and perhaps I am in a better position than my honourable friends, who probably are afraid that they may have to face their constituencies in the future, and that they may have some trouble, or some of them may have got some mandates. But, Sir, I make bold to say that if my constituency is so backward as to disapprove of a measure like this, then I say, the clearest duty on my part would be to say to my constituency, "You had better ask somebody else to represent you". Because, after all, you must remember that public opinion is not so fully developed in this country, and if we are going to allow ourselves to be influenced by the public opinion that can be created in the name of religion when we know that religion has nothing whatever to do with the matter—I think we must have the courage to say, "No, we are not going to be frightened by that".

Sir, I do not wish to go further into the details of this

Bill because I hope that this House will reject this motion, which is really a dilatory motion. I tried to understand what good will come out of this if the House now agree either to the postponement of this measure or delay in passing this measure. I have not yet been able to understand what is the object of it. I asked my Hon'ble friend Dhirendra Kanta Lahiri Chaudhury—for whom I have great respect and, although he opposes this Bill, I admire his speech because he took up a very courageous, strong and admirable stand—I asked him why he wanted time and his reply was the first opportunity that I had of getting some definite reason for the postponement—and he said he wanted to go back to his constituency and consult them and, therefore, he wanted three months. Surely, I appeal to my honourable friend over there, has not his constituency had enough time, has not this question been agitated in this House for the last two years, and what will you gain by postponement unless you want to strengthen your opposition, unless you want to frighten the Government more?

MR. M. K. ACHARYA: Is that a crime?

MR. M. A. JINNAH: No, perfectly legitimate. I do not want the Government to slip away again. It is after a great deal of trouble that I have the pleasure of seeing the Government in this frame of mind, which was echoed by my Hon'ble friend Mr. Keane there. The Government is not always ready to take risks in matters of this kind. I hope the policy has changed. I welcome it, and I say that, by taking up this attitude towards this measure, the Government, although foreign, has proved that it is national in its spirit so far as this matter is concerned. In the past the Government policy was, "We have enough trouble. We have got the agitators who are making our lives miserable already. Why should we undertake a measure which will make our loyal subjects who always support us, who look upon us as *ma-baps*—the orthodox who are quite content and satisfied—why should we undertake this extra trouble, this extra burden upon our heads to improve your people?" That was their attitude, but I am glad that, that policy has

been exploded, and I hope for ever, and I hope that Government will in future side with us in the matter at any rate concerning social reforms we are working so that we may help India to take her place among the great nations of the world. We are looking forward to a great India and a great nation. This is after all a small move. It is not going to be the end of all our troubles or evils that exist, nor is it going to be our salvation. It is only the beginning. If you take your courage in your hands and if Government do their duty to help us in the onward march of progress to secure the welfare of the people of India, I say that India will not have to ask for self-government. It will come to us.

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XII

TRIAL IN ABSENTIA

"The man who goes on hunger-strike has a soul. He is moved by that soul and he believes in the justice of his cause."—Jinnah

A Bill further to amend the Code of Criminal Procedure was introduced in the Indian Legislative Assembly on the 12th of September, 1929. The principal object of the proposed amendment was to give power to the Court to hear a criminal case in the absence of the accused, if he had, by his own voluntary act, made himself incapable of appearing in Court and had also declined to be represented by counsel.

While making a motion that the Bill be taken into consideration, the Home Member, Sir James Crerar, made rather an apologetic speech in justification of the proposed amendment. He said that it was with a deep sense of regret that Government found themselves compelled to bring this Bill before the House.

The Home Member narrated the circumstances which, according to him, had necessitated this change in the law of criminal procedure. A brief summary of his reasoning may be given.

In the Punjab, sixteen persons were going to be tried on some grave charges, including murder, conspiracy to murder, waging war against the King and conspiracy to do so. The case was as yet at the inquiry stage before a Magistrate. Now, what happened was that before the actual commencement of the magisterial inquiry, two of the accused persons entered upon a hunger-strike. Subsequently thirteen other accused also joined in the hunger-strike. Thus, in all, fifteen of the accused rendered themselves incapable of being produced in

Court. Moreover, these accused withdrew their briefs from all the eight counsel to whom they had entrusted their defence. In these circumstances, Government moved an application in the High Court praying that the inquiry Court may be authorised to appoint counsel for the accused, so that Section 540-A of the Criminal Procedure Code could be applied. But the High Court held that it was not in its power to authorise the Magistrate to appoint a counsel, nor could the High Court itself make such an appointment without the consent of the accused. Thus a deadlock had been created and an important case, in which 400 witnesses had been cited and an additional large number was yet to be added, could not proceed. The Government had, therefore, no option but to bring this Bill, so that it was made possible for this case to proceed. Also, the object of this Bill was not confined to the instant case; similar situations could, rather were likely to, arise in future as well. A lacuna in the law of criminal procedure had been revealed and it was necessary to remove it. There was another consideration also in favour of the proposed legislation. He said: "In a case of this kind where a large number of accused are concerned, a certain number of them may not adopt this particular expedient (of rendering themselves incapable of appearing in Court) which has so far resulted in holding up the trial. These co-accused may be persons who may perhaps have a reasonable hope of acquittal or who, at any rate, may have reason to hope, if they are convicted, that the punishment inflicted upon them may not be very severe. But surely it is an injustice to them that their opportunity of having a judicial pronouncement on their guilt or innocence should be indefinitely delayed. There should be no fear about misuse of this power by the Court. The power will be judicially exercised and the Executive will have nothing to do with it." As an additional safeguard, Government were willing to accept an amendment in the Bill so that this discretionary power to hear a case in the absence of the accused and his counsel was exercised exclusively by the High Court and not by any subordinate Magistrate. But a question could be asked, why not accept the demands of the undertrial prisoners? Then there would be no need for this Bill. On this, the stand of the Government was that all reasonable

demands of the accused had been met. For instance, the Punjab Government, in view of the probable length and strain of the trial, had sanctioned special diet for the prisoners, if it was required on medical grounds. But the main demand of the accused in this case was that they should be treated as "political prisoners", and they should, on that account, be given certain preferential treatment. This demand it was impossible for the Government to concede.

This, in short, was the Government case as presented by the Home Member. In conclusion he made an appeal to the House "to deal with this matter without prejudice, impartially, and with a fair and just recognition of the facts which have compelled Government to lay it before the House."

The Home Member also said that though Government considered the matter of great urgency and wanted the Bill to be passed immediately, yet, if the House so desired, he would agree to refer the Bill to a Select Committee, provided the report by the Committee was made at an early date.

Two amendments were moved to the Government motion, one by Mr. N. C. Kelkar asking "that the Bill be circulated for eliciting public and legal opinions thereon", and the second, by Mr. K. C. Roy, proposing that the Bill be referred to a Select Committee, with instructions to report by Monday, the 16th of September, 1929. Needless to add that Mr. Roy was a nominated Member.

Now, technically there were three motions before the House. But in substance there were only two, because the motion for referring the Bill to a Select Committee was made with the tacit approval of the Government. It is of some interest to notice that all the names proposed for the Select Committee were of the Government Members or of those who could be depended upon to support the Government, and most of the latter were those who, in any case, were not qualified to say much about the important principle of criminal jurisprudence involved in the Bill. Indeed, this aspect of the composition of the proposed Select Committee was conceded by the Mover himself. He said that he would frankly confess that

he was not satisfied with the composition of the Committee. He explained that he had invited some of the prominent Members to be included in the Select Committee, but they had all declined because, they said, they would not accept the Bill in principle.

The debate that followed was generally kept at a level which should do credit to any legislature to emulate.

After the usual Question Hour, the discussion on the Bill started in the morning of the 12th of September, with the President of the Assembly, Mr. V. J. Patel, in the chair. With a brief lunch break, the debate continued till the evening on that day.

It was past 4 o'clock when Mr. Jinnah rose to speak. Before that, eleven Members had addressed the House. Six of them, namely, Sir James Crerar (Home Member), Mr. K. C. Roy (Bengal: Nominated), Sir Darcy Lindsay (Bengal: European), Mr. Anwar-ul-Azim (Chittagong Division), Mr. R. S. Sarma (Bengal: Nominated), and Mr. H. W. Emerson (Home Secretary), spoke in support of the Bill. It will be noticed that amongst these there was only one elected Indian. Those who opposed the Government motion were Mr. N. C. Kelkar (Bombay), Mr. Abdul Haye (Punjab), Diwan Chaman Lall (Punjab), Mr. Jehangir K. Munshi (Burma) and Mr. Jamnadas M. Mehta (Bombay), and, of course, they were all elected Indian Members.

Mr. Jinnah could not conclude his speech on that day and the House was adjourned to meet again on the 14th of September.

When the Assembly met on that day, and before Mr. Jinnah resumed his speech, Pandit Motilal Nehru moved an adjournment motion, which had a direct bearing on the subject-matter of the Bill. Leave was sought to "move for the adjournment of the House to discuss a definite matter of urgent public importance, namely:

> The situation arising out of the action and policy of the Government regarding the treatment of the accused

under-trial in the Lahore Conspiracy Case which has already resulted in the death of Jatindra Nath Das and is endangering the lives of other hunger-strikers in the said case.

The adjournment motion was held in order and the President of the Assembly fixed 4 p.m. on that day for discussion of the motion.

A grave element of pathos was now introduced into the debate on the Bill, which otherwise dealt with rather a dry subject like an amendment of a provision of the Code of Criminal Procedure. The death of young Jatindra Nath Das turned into a grim reality what had so far been discussed on the basis of hypotheses and probabilities.

Since we propose to reproduce some excerpts from the proceedings relating to the debate on the Bill as well as that on the adjournment motion, it is unnecessary here to dilate on the circumstances leading to the death of Jatindra Nath Das. A brief statement of a few facts may, however, be made.

The young man, aged about 24, was known as Comrade Jatindra Nath Das. He was one of those under-trial prisoners in the Lahore Conspiracy Case who had entered on the hunger-strike. The demand of the hunger-strikers was that they be treated as "political prisoners" and should be given some facilities, which were all of a very ordinary nature and to which European prisoners in India—and in this category were included not only those belonging to any of the European races, but also those Indians and others who had adopted the European style of dress—were entitled as a matter of right, regardless of the nature of the crime and whether they were under-trials or convicts. The Government refused to accept this demand. However, they gave an undertaking that if an application for bail was made on behalf of Jatindra Nath Das, it would not be opposed. Jatindra refused to avail of this concession, because that would have been letting down his comrades and the cause. Instead, he chose to lay down his life and he died on the 63rd day of his hunger-strike.

In description of the heroic struggle of this young patriot

we cannot do better than to quote from what Mr. M. R. Jayakar said, during his speech in the debate:

> "He died slowly, inch by inch; one hand gone paralysed for want of sustenance, another hand gone atrophied for want of nourishment, one foot gone, another foot gone, and the last of nature's precious gifts, eyesight, gone; the fire of those orbs slowly quenched, inch by inch, not by the sudden and merciful death of the guillotine, but with the slowness with which nature builds or destroys. Oh, the anguish of this slow torture."

Mr. Jinnah resumed his speech at about eleven o'clock, that is, immediately after the Chair had admitted the adjournment motion concerning the death of Jatindra Nath Das. He was followed by the Law Member (Sir Brojendra Mitter) and the four other Members who took part in the debate on that day were Pandit Motilal Nehru, Mr. E. L. Price, Mr. M. R. Jayakar and Mr. M. Keane. The last speaker concluded his speech at 4 p.m., which was the time for the consideration of the adjournment motion. This would show that, on that day, the debate on the Bill took full five hours, except for a short lunch interval.

Discussion then started on the adjournment motion, which had been moved in the morning. The Mover, Pandit Motilal Nehru, made a brief speech in support of his motion. The others who spoke in favour of the amendment motion were Pandit Madan Mohan Malaviya, Mr. Amar Nath Dutt, Sir Purshotamdas Thakurdas and K. C. Neogy.

Besides the Home Member (Sir James Crerar), the Foreign Secretary (Sir Denys Bray), and the Home Secretary (Mr. H. W. Emerson), the only other person who supported the Government on this issue was a European nominated Member, Mr. G. L. Winterbotham. (Winter in the heart, perhaps.)

Many elected Members refrained from speaking. The object was that within the prescribed time the adjournment motion should be put to vote and not just be talked out. As

the closing hour approached many Members demanded that the question be put. The Mover also declined to avail of his right of reply. On the question being put, the Assembly divided and the adjournment motion, which was really a vote of censure against the British rulers in India, was carried by 55 votes against 47.

As the event is of considerable historic interest, it is as well that the composition of the division lobby on either side may be reproduced:

AYES-55

Abdul Haye, Abdul Matin Chaudhry, M. S. Aney, D.V. Belvi, Thakur Das Bhargava, G.D. Birla, Chaman Lall, N. C. Chunder, B. Das, Nilakantha Das, Amar Nath Dutt, Abdul Latif Farookhi, Sarabhai Nemochand, Hans Raj, A. Rangaswami Iyengar, Jamnadass, M. R. Jayakar, M. A. Jinnah, V. V. Jogiah, Kartar Singh, N. C. Kelkar, Rafi Ahmed Kidwai, Hirday Nath Kunzru, D. K. Lahiri Chaudhury, Lalchand Navalrai, Madan Mohan Malaviya, Jamnadas Mehta, M. S. Sesha Ayyanger, Dwarka Prasad Misra, S. C. Mitra, Dr. B. S. Moonje, Mukhtar Singh, Jehangir K. Munshi, Murtuza Saheb Bahadur, B. P. Naidu, Motilal Nehru, K. C. Neogy, Vidya Sagar Pandya, Srijut T. R. Phookun, Purshotamdas Thakurdas, Muhammad Rafique, Rang Behari Lal, Sarvotham Rao, Harbilas Sarda, T. A. K. Shervani, Abdul Qadir Siddiqui, Kumar Rananjaya Singh, G. P. Singh, R. N. Singh, N. Prasad Singh, K. G. Singh, Siddheswar Prasad Sinha, Triloki Nath, Yusuf Imam, Rajivaranjan Prasad Sinha.

NOES-47

Abdoola Haroon, Mian Abdul Aziz, Sahibzada Abdul Qaiyum, Abdullah Haji Kasim, V. K. Aravamudha Ayangar, R. S. Bajpai, E. H. M. Bower, Sir Denys Bray, T. A. Chalmers, J. C. Chatterjee, W. A. Cosgrave, Sir James Crerar, Ghulam Kadir Khan Dakhan,

H. W. Emerson, V. M. Ferrers, J. C. French, Ghazanfar Ali Khan, H. A. J. Gidney, Hira Singh, Jawahar Singh, M. Keane, Sir Darcy Lindsay, Bhupendra Nath Mitra, Sir Brojendra Mitter, A. K. Mukharji, S. C. Mukherjee, D. F. Mulla, Sir Frank Noyce, A. Upendra Pai, J. Y. Philip, L. L. Porter, E. L. Price, Sir George Rainy, P. R. Rau, K. C. Roy, S. N. Roy, R. S. Sarma, Sir George Schuster, S. N. Singh, H. L. Stevenson, D. C. Stewart-Smith, E. F. Sykes, Tin Tut, G. R. F. Tottenham, G. L. Winterbotham, Muhammad Yakub, Muhammad Yamin Khan.

The debate on the Code of Criminal Procedure (Amendment) Bill was next resumed on Monday, the 16th of September, 1929.

But, by now, not much interest was left in the subject. The Government could not possibly ignore the result of the vote on the adjournment motion taken two days earlier. The President of the Assembly allowed the Home Member to make a statement, because that would, in the opinion of the Chair, "facilitate public business, curtail the debate and save public time."

In this statement, while the Home Member stuck to his original stand and contended that there was nothing wrong with the Bill in principle, he, at the same time, yielded to the demand to have the Bill circulated.

No other Member spoke and the non-official motion, that "the Bill be circulated for eliciting public and legal opinions thereon", was adopted by a voice vote. The only Member who raised a voice in dissent was Mr. E. L. Price. He was trying to be more loyal than the king.

This debate in the Indian Legislature is a significant event in the history of the sub-continent and the struggle of its people to liberate their homeland from the foreign rule and all the exploitation, injustice and oppression that was involved in this rule.

Professedly, the object of the Government was merely to introduce a new provision in the law of criminal procedure.

But in the discussion that followed, the legal aspect of the matter turned out to be the least important of all the issues that were raised.

As far as the Bill itself was concerned, the Government suffered a total defeat. In conceding to accept the motion for circulation the Government merely tried to save face. The "public and legal opinion" had already been so manifestly demonstrated against the proposed change in the law of criminal procedure that if the Government had any moral courage it should have withdrawn the Bill. It is not known whether the formality of circulating the Bill was implemented or not, but it is known to every lawyer that a provision permitting an *ex parte* trial never came to be included in the Criminal Procedure Code of India.

An important feature of the debate and the vote, both on the Bill and the connected matter of adjournment motion, was that it signified a remarkable unity amongst the patriotic and progressive politicians of the country. Not that the British Indian Government did not make every effort to divide them; but in the result this effort miserably failed. The Government failed to break the hunger-strike as also the unity of the elected Members of the Legislative Assembly. And this despite the fact that the Government of the day could, and did, bestow all sorts of privileges and (dis)honours on those who would support them.

We would not say that Mr. Jinnah's speech in the debate is remarkable for its courage, candidness, moderation, persuasiveness, convincing logic, eloquence and a subtle and refined sense of humour, because all these are qualities which characterise the whole of his long career as a parliamentarian. Therefore, without making any comment, we would leave it to the reader to judge.

The length of the debate on this question has already been roughly indicated by the time taken by it and the number of Members who participated in the discussion. Another way of giving an idea about this would be to mention that the de-

bate on the Bill and the adjournment motion covers 117 closely printed pages of the official reports.

We would now proceed to reproduce those parts of the proceedings which we have selected for this book. Naturally, Mr. Jinnah's speech is given in full. Other parts have been included for various reasons; some because they contain an appreciation or criticism of Mr. Jinnah's views, others because they would give an idea of the general thinking of the various sections in the Indian Legislature of that period, and yet some other parts for the reason that, in the opinion of the editors, they should otherwise be of interest.

Speaking on his motion that the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose (insertion of a new Section: 540 B) be taken into consideration, the Home Member, Sir James Crerar, said:

"I imagine, Sir, that it may be contended that this Bill traverses some general principles of criminal jurisprudence. Sir, I submit to the House that the first and most fundamental rule of criminal jurisprudence is that the law shall prevail, that in every civilised country, every man is entitled to the protection of the law, and that every man who is accused of an offence shall be called upon, effectively, to answer it. I submit that there is nothing in this Bill which is anything but an affirmation of that principle......"

Speaking on his amendment to the effect "that the Bill be circulated for eliciting public and legal opinion thereon", Mr. Kelkar said:

"I cannot allow these present strikers, at any rate, to be made victims of this Bill which has arisen out of their own strike.........The Bill may pass after the end of this case and prove useful, as I have said, in other conditions. But it is unfair to pass this Bill while this strike is going on. And why do I say that it is due to them?......This House will remember that the hunger-strikers have raised a first class political issue in the matter of the jail treatment of prisoners, and racial discrimination. Now, how have they done it?......Not like in-

genious lawyers sitting in their armchairs, in their consulting rooms comfortably; not like dilettante or amateur theorists in criminology, sitting in their comfortable libraries......"

MR. M. A. JINNAH: Nor like journalists in their editorial sanctum!

MR. N. C. KELKAR: No; in none of these ways has this first class issue been raised; but they have raised the issue under the hardest of jail conditions. This must be remembered to their credit, and, therefore, I say that they ought not to be made victims of a Bill of this type......I quite admit that the merits of a hunger-strike may be debatable; there may be two sides to it. However, is a hunger-strike suicidal? Certainly it cannot be called suicidal, because we know that Mahatma Gandhi himself went on hunger-strike for twenty days and would not take any food during the period......My next point is that, even supposing it is suicidal, you must remember that it is not for avoiding the trial......but as a protest—a positive, practical, active protest—against certain racial discrimination and bad treatment in jail. They are fighting a political battle of this Assembly,......because apparently, from the accounts, some of these fellows seem to be very bold. It is not as if they shirk the consequences of the trial; some of them are prepared for, who know what may come, transportation for life, or even to go to the scaffold.

Now, what is the difference between these people and those who sit in this House? It may be that they have not our patience and our perception of the realities and the possibilities of the political situation in this country. But, on the other hand, can they not say, "You people in the Assembly have not got our courage and our idealism". It is perfectly open to them to say that. Each of us takes his own consequences. They go to jail for their opinions, they also go to the scaffold, and what do we do? We reap the ignominy of going to the Councils and placidly preaching constitutional agitation for ages in and ages out. Supposing, before the forum of the world, some of these people were present and some of us in the Assembly were also present there—You know, generally,

in foreign countries people put to us the question, "You are 300 millions of people in India. Why don't you win political freedom for yourselves?" Let each one of us give our answers. We say: "We are preaching, agitating and teaching people constitutional agitation." And what would one of these people say? They would say, "We have given our lives; we are prepared to give our lives."

Moving his amendment that the Bill be referred to a Select Committee, with instructions to report after three days, Mr. K. C. Roy said:

"My friend Mr. Kelkar has asked me one very pertinent question: What has been the practice in another country. And he has himself referred to the hunger-strike of Mr. MacSwiney. Sir, I have tried to look up the facts, and what do I find? I find that most of the Irishmen who went on hunger-strike did so after conviction. The case that has arisen in Lahore, the merits of which I shall not go into, is without parallel in the history of the world. Will this House deny Government the right to place their case before the House as well as before the Select Committee?...I do not wish to go into the question of the hunger-strike. Hunger-strike as a political instrument is an innovation; and it has been foisted on India."

Mr. Abdul Haye (East Punjab) strongly supported the amendment of Mr. Kelkar, and said:

"We realise that at this stage we cannot permit the Government to place permanently on the Statute-book of this country a measure of this nature. Sir, our national poet has said:

> *Qarib hai ab roz-i-mahshar chhupega kushton ka khun kiunkar,*
>
> *Jo chup rahe gi zaban-i-khanjar luhu pukarega aastin ka.*

A MEMBER: What does it mean?

MR. ABDUL HAYE: I will render it in English. It comes to this. The poet says that the day of judgement is quite near and it will not be possible for you to hide your guilt. If the sword with which you have committed the murder will not give evidence, your sleeve stained with blood will expose you. Sir, this couplet was quoted by the Hon'ble Mr. Justice Mahmood when, sitting on the Bench of the Allahabad High Court, he ruled that, under whatever disabilities an accused person may be, no judgement against him could be passed in his absence. Now, Sir, we have serious objections against the proposed legislation, and if this Bill is not circulated for eliciting public opinion thereon, it will be our painful duty to oppose it, and oppose it tooth and nail......"

Speaking on behalf of the European group, Sir Darcy Lindsay supported the amendment moved by Mr. Roy, and said:

"As regards the law, I am no lawyer, but I do think that I am blessed with a certain amount of common sense. It appears to me that, if there is a defect in the law, there is no reason why it should not be remedied... It was only yesterday, Sir, that my honourable friend Mr. Jinnah gave great praise to the Hon'ble the Home Member for the reasonableness of his attitude in connection with the Child Marriage Bill."

MR. M. A. JINNAH: Only with that particular measure, I do not withdraw what I said.

SIR DARCY LINDSAY: He said that it was a national measure in the interests of India, and he hoped that the Hon'ble the Home Member would carry on with that good policy. Now, I ask my honourable friend Mr. Jinnah if this is not a measure which carries forward that good policy?

MR. JINNAH: I do not think my honourable friend is quoting me correctly. I said this: If the Government will carry on that policy towards social reforms in this country, it will not only be welcome, but it will help India to go forward.

Diwan Chaman Lall (West Punjab) read out a statement made by Bhagat Singh and Dutt at the time of starting their hunger-strike, and which was as follows:

"Sir, We, Bhagat Singh and Dutt, were sentenced to life transportation in the Assembly bomb case, Delhi, on the 19th of May, 1929. As long as we were under-trial prisoners in the Delhi Jail we were accorded very good treatment and were given very good diet; but since our transfer from that jail to Mianwali and Lahore Central Jails, respectively, we are being treated as ordinary criminals. On the very first day we wrote an application to the higher authorities asking for better diet and a few other facilities, and refused to take jail diet. Our demands were as follows:

(1) We, as political prisoners, should be given better diet, and the standard of our dietary should at least be the same as that of European prisoners. It is not the sameness of diet that we demand but sameness in the standard of diet.

(2) We shall not be forced to do any hard or undignified labour at all.

(3) All books, other than those proscribed, alongwith writing materials, should be allowed to us without any restriction.

(4) At least one standard daily paper should be supplied to every political prisoner.

(5) Political prisoners should have a special ward of their own in jail provided with all necessities as those of the Europeans, and all the political prisoners in one jail must be kept together in that ward.

(6) Toilet necessities should be supplied to us.

(7) better clothing.

We have explained above the demands that we made. They are most reasonable demands. The jail authori-

ties told us one day that the higher authorities would comply with our demands. Apart from that, they handle us very roughly while feeding us artificially, and Bhagat Singh was lying quite senseless on the 10th of June, 1929, for about 15 minutes after forcible feeding, which we request to be stopped without further delay.

In addition we may be permitted to refer to the recommendations of the United Provinces Jail Committee by Pandit Jagat Narain and Khan Bahadur Hafiz Hidayat Hussain. They have recommended the political prisoners to be treated as better class prisoners."

In reply to a question by Pandit Motilal Nehru, Diwan Chaman Lall said the statement was published in 'The Tribune' of the 14th of July, 1929. He then asked the Home Member what had prevented the Government of India or the Government of the Punjab from accepting these just demands. Also an allegation had been made in the Press that a definite undertaking had been given to these hunger-strikers that Jatindra Nath Das would be released.

The Home Member intervened to say: "Sir, may I remind the Hon'ble Member that the Punjab Government made it known that, if an application for bail in the case of this particular prisoner were made, they would not oppose it?"

Diwan Chaman Lall wanted to know what action had been taken on that offer. The recommendation for immediate release could not mean release on bail.

He went on to ask the Home Member one question: "Here we are dealing with a case in which the men refuse to take food. Suppose a man overeats himself by a voluntary course of conduct and thereby is unable to be present before the Court, is this Section going to apply to him"?

SIR JAMES CRERAR: He could be represented by counsel.

Further, Diwan Chaman Lall advanced a supposition that

an under-trial prisoner took his shirt off and exposed himself to the bitter north wind and caught double pneumonia, would that be a voluntary course of conduct? The moment the Home Member said "no," Diwan Chaman Lall went for him:

"The Hon'ble Member says 'No'. Can he point out to me where the 'no' would come in, if this Section is passed by this House? Where would it come in? Is it or is it not a voluntary course of conduct? I am merely pointing out one or two ridiculous aspects of this particular Section."

Mr. Anwar-ul-Azim (Chittagong) wanted to make the position of certain members of the Central Muslim Party clear—"who practically on important occasions keep the balance of decision in this House". He disagreed with Mr. Kelkar that the example which these hunger-strikers were setting would help him to liberate the country or would make his country as free as Ireland, and added:

"Personally, I do not think that this is the right course for any honourable and peaceful man to follow, because my creed, my religion, is peace, and as such I do not think that I could support that part of Mr. Kelkar's contention......Without being disrespectful to those people who call for status, those gentlemen who say that they are fighting for the freedom of their country, I should say this that they should have realised in their minds, before they brought themselves into the clutches of the law, what sort of treatment and comforts they would have while they happen to be inside the jail."

Mr. R. S. Sarma (Bengal, Nominated Non-Official) supported Mr. Roy's amendment and lent his unequivocal support to the principle underlying the Bill. As regards Diwan Chaman Lall's claim that "no decent man, who is not tied to the Official Benches, will fail to go to the same lobby as Mr. Kelkar," he said that "this canard about non-official nominated Members being tied to the Official Benches is absolute rubbish," and asserted that "the non-official nominated Members are unfettered, and that they vote according to the best of their judgement, and if he says that we are tied to the Official

Benches, let me remind him that our ties are like silken threads compared to the chain of triple steel in which the unruly Swarajist followers are held by their party leader."

In his sharply worded speech, Mr. Jehangir K. Munshi (Burma) said:

"Sir all great men have hobbies; and my honourable friend Sir James Crerar being a great man has his own hobbies. His principal hobby at the moment seems to be to appear before this House as the central figure in a series of legislative stunts of a sensational and unconstitutional nature. Sir, once again the Government of India approach this House with a Bill unparalleled in the history of criminal jurisprudence. I assert, and I think my honourable friend the Law Member will admit, that it is the basic principle of the criminal jurisprudence of every civilised country that no accused can be tried and convicted *ex parte* in his absence unless he is represented by his counsel...I am forced to the irresistible conclusion that the main object which has actuated the Government of India in bringing this Bill before the House is not because they are afraid of the delay or defeat of justice, but because they are seriously alarmed at the consequences, the far-reaching consequences to the country, of these hunger strikes......Sir, turning now to my honourable friend Mr. Sarma, I congratulate him on two things: his maiden speech and his extremely well-fed appearance."

Mr. Jamnadas M. Mehta opposed the motion made by the Home Member as well as Mr. Roy's amendment on behalf of the whole of the Congress Party "which is determined to oppose this Bill, lock, stock and barrel." Mr. Mehta mentioned the cases of suffragettes who had often gone on hunger-strike, and the celebrated Saccho-Vanzetti case in America which lasted for seven years. "Saccho and Vanzetti had gone on hunger-strike not only after conviction but during the retrial motion and not for a day or two but for 33 days. But there was no Sir James Crerar in America to introduce a legislative measure aimed at dispensing with the pre-

sence of the accused in the Court." Concluding his speech he said:

"I agree with Mr. Sarma in saying that the whole world is looking at us, the whole world is watching whether the Indians are a nation of cowards and sycophants or whether, even in their present degraded condition, they have the courage to say, 'No' when occasion demands. I hope the House will prove by its vote that, degraded as we are, we cannot stand the outrage that is being contemplated against these heroic young men, and I hope the House will stand united and will say, 'No', in no uncertain terms to the motion of the Government".

Mr. H. W. Emerson (Home Secretary) said the amendment was necessary because in the case in reference hundreds of witnesses had been cited. Referring to the petition by Bhagat Singh and Dutt, read out by Diwan Chaman Lall, he said:

"I wish to satisfy this House that these demands, simple though they may appear, involve vital principles. There are three issues raised. First of all, there is the question as to whether the demands of Bhagat Singh and Dutt are reasonble, as applied to themselves; secondly, there is the general treatment of political prisoners; and thirdly, there is the racial question of the differentiation between European and Indian prisoners." He then read out the footnote to the petition which ran as follows:

> "By 'political prisoners' we mean all those people who are convicted for offences against the State; for instance, the people who were convicted in the Lahore Conspiracy cases, 1915-17, the Kakori Conspiracy case, and sedition cases in general."

As regards the discrimination between the European and Indian under-trial prisoners, he said:

"There are two criteria: firstly, the nature of the offence, and, secondly, the character, status, and education of the pri-

soner. The excluded offences are, broadly speaking, those which involve violence or abetment of violence, or which involve offences against property, or seducing of soldiers or police from their allegiance, and offences committed on hire in pursuit of political causes, that is to say, a political offender who is paid to commit an offence."

The last part of this statement caused an uproar in the House, but Mr. Emerson continued and started giving instances of comparable laws in some foreign countries.

Mr. K. C. Neogy (Dacca Division) intervened to ask as to how did Government define the word "European" in this connection.

In reply, Mr. Emerson said: "The rules relating to Europeans in the jail manuals of most of the Provinces apply to any one, whether European or Indian, who has adopted the European mode of life." He said there were only two ways to sweep aside whatever differentiation there was; either to level up or level down. The first option was out of the question, and the second was too costly. According to him, if the Indians were treated at a par with the Europeans the cost in the Punjab alone would be 40 lakhs of rupees a year.

At the end of his speech, Mr. Emerson asked the Members not to glorify the hunger-strikers, though he understood their feelings of sympathy and admiration for the prisoners. But when he was about to show the best way to end the hunger-strike, several Members interrupted him to complete his sentence with the words "to pass this Bill."

Mr. Jinnah rose to speak after Mr. Emerson.

After Mr. Jinnah had finished his speech, the Law Member, Sir Brojendra Mitter, began by thanking Mr. Jinnah "for bringing this debate from the foggy atmosphere of politics into the pure atmosphere of law, because, after all, the Bill before the House deals with a technical branch of the criminal law." But he claimed that Bill had nothing whatsoever to do with substantive law. Sir Brojendra argued that there were many cases when the accused did not

defend themselves and the Court proceeded *ex parte*. This obvious slip was pounced upon by Mr. Jinnah and Mr. Rangaswamy Iyengar.

Pandit Motilal Nehru described the Bill as an outrage on the Legislature. He said:

"The Government comes before the House and says: 'We have blundered; we have not done our duty; we have blundered in our treatment of these accused people. The matter has gone so far and we are in such a mess now that we come to this House to help to extricate us from that mess by some sort of a special procedure which, whether known to the law or unknown to the law, will save us.' That is the position. The only answer to this position can be: You have done these things in spite of repeated warnings of this House. I will not go into the long history of these warnings because my honourable friend Mr. Jinnah has already referred to them. By your persistent conduct you have brought all these things upon yourselves, and you have to take the consequences; we cannot help you. That is the plain answer."

Referring to the examples from foreign countries cited by the Law Member, Pandit Motilal pointed out that the people of England, France and America were not struggling for their liberty against an alien occupation.

Mr. M. R. Jayakar took Mr. Price to task for having insulted the Indian people by likening the hunger-strike in Lahore to a feminine trick and said:

"I can assure my honourable friends opposite that no Indian, whatever his political views may be, will ever withhold his sympathy in their fight on that question, whether he is a Congressman, or a Nationalist or an Independent. It is the question of all questions. I wish the Government would realise the significance of this question. They cannot lightly dismiss it, as the Hon'ble Member from the Punjab did. The Hon'ble Member from the Punjab said yesterday that a European is defined as a man who has adopted European manners. May I tell him —possibly he does not know —that in many places in

this country the word "European" is interpreted so as to give the benefit of these humane jail rules to Chinese silk hawkers who wear a topee, and to white complexioned loafers. Is that the definition of a European? It has now come to this practically, and I will say so frankly for the benefit of the Hon'ble Member from the Punjab, the sole test is in practice the presence or absence of a certain quantity of pigment in the skin of the individual. Let him accept this difinition of the term European and I shall thank him for his frankness."

We now reproduce a brief summary of the debate on the adjournment motion on the 14th of September, 1929.

Speaking on his adjournment motion, Pandit Motilal Nehru described the events leading to Jatindra Nath Dutt's death and asked the House to censure the Government as it had shown "an utter lack of the human element." He said: "The charge is that the Government have stood still while human life was ebbing away, that they were not taking the steps which it was their very clear duty to take."

In reply, the Home Member, Sir James Crerar, said "the occurrence which has been the immediate occasion of this motion is a matter which Government do sincerely deplore," but he refused to admit that the Government had been guilty of negligence.

Pandit Madan Mohan Malaviya supported the censure move and read out a letter that had been written by Gopal Singh, B.A., Qaumi, special class prisoner, from Mianwali Jail to the Governor of the Punjab, and in which he had described the plight of political prisoners.

Mr. Amar Nath Dutt offered his "tribute of tears to the memory of the great departed", and said: "We have today met in this House not like on other occasions. We have assembled here today under the shadow of a great national calamity. I wish the Government had the heart to feel, instead of being callous to all our sufferings and keeping us in bondage...I

charge Government with murder of Jatindra Nath who laid down his life to vindicate the elementary right of political prisoners in India."

Characterising the Governments of India and the Punjab as "so many murderers", Mr. Amar Nath Dutt said it was useless to tell them what to do, because, "they will not follow the righteous path, for robbers and freebooters do not do so, neither do murderers. I only remind them in the words of one of their poets which I read when I was a boy of eight or ten, with slight variation:

'England shall perish, write that word in the blood she has spilt.

Perish hopeless and abhorred.

Deep in ruin as in guilt.' "

Sir Denys Bray (Foreign Secretary) said that after the "outrageous language" of Mr. Dutt, which he should "treat with the contempt that it deserves", it was time "that the still small voice of reason, of reasoning, of reasonableness should be heard." He said: "From out of this tragedy must spring a stirring of the conscience, of people and Government alike, that shall lead on to a searching scrutiny into the whole philosophy of our jail regime."

At this stage several Members demanded that the question be put to vote, as the time allotted for debate on the motion was drawing to a close. However, Mr. Winterbotham and Sir Purshotamdas Thakurdas insisted on speaking in defence of the Government.

They were followed by the Home Secretary, Mr. H. W. Emerson, who had earlier served in the Punjab. Mr. Emerson claimed that the Governments of India and the Punjab had done everything on principle.

Speaking after him, Mr. Neogy from Dacca, recalled the days in 1919 when "doughty Punjab officials, worthy predecessors of the honourable gentleman who has just sat down,

tried to defend an indefensible case," and said: "No doubt, the O'Dwyers and Dyers have left the shores of India, but, if at any time it is necessary for the Government to put into practice the policy which was initiated by them in those days, I have no doubt that Government will not want for officers of the proper stamp to carry that out...There must be something peculiar to the Punjab cases that they had attracted this much of attention at the hands of the Government of India. When I say this, I am reminded of certain statements that appeared in the Press to the effect that these under-trial prisoners used often to be told that they had better remember that this was the Punjab......

"As an unworthy representative of the Province which has been honoured by the birth of Jatindra Nath Das, I wish to pay my tribute of respect and homage to the memory of that illustrious son of Bengal. Sir, no word of regret that may be expressed on the floor of this House will restore Jatin Das to life. Sir, I know another illustrious son of Bengal is, at this very moment, on the point of death in similar circumstances. I refer to Satindra Nath Sen, a name which is a household word in Eastern Bengal, an illustrious patriot, a selfless worker in the cause of the country, who is not unknown to many of us here. Sir, he has been on hunger-strike for about 114 days now, with a very short interval. How is it that the Government of India do not possess any information about that matter?"

Again, several Members asked for the question to be put. The President invited Pandit Motilal Nehru to reply to the discussion but he declined to use this right. As mentioned earlier, the adjournment motion was carried.

Speaking finally on the Bill, two days after the adjournment motion was adopted, the Home Member chose his words with extraordinary care. He said that the proposal to elicit opinion on the Bill was "a grave and weighty appeal" , and added: "To arguments urged with temperance and moderation we cannot, and indeed we have no disposition to close

our minds or our ears, or fail to appreciate the sincerity and depth of feeling which have inspired them."

The President of the Assembly put the question that the amendment, to the effect that the Bill be circulated for eliciting public and legal opinions thereon, be made to the original motion. Mr. E. L. Price immediately shouted 'No', but when the President inquired whether he desired a division, he again promptly said, "No, Sir". On the passage of the amendment, the President of the Assembly remarked: "I must congratulate the House on the result."

We now reproduce Mr. Jinnah's remarkable speech on the Bill:

Sir, one is placed somewhat in a difficult position when one has got to deal with a speaker like the last one. It was his maiden speech, and it is the tradition of this House, that when a Member makes his maiden speech, he is in a privileged position and is not to be attacked. Whatever reasons or grounds, therefore, he may have given me for criticising him, I will not wish to depart from that tradition which, I think, ought to be maintained in the House. But I would say this, that in his concluding portion he remarked that the Hon'ble Members may have admiration and sympathy for the accused in the Lahore case. I think I am speaking on behalf of a very large body of people when I say that, if there is sympathy and admiration for the accused, it is only to this extent, that they are the victim of the system of government. It is not that we approve or applaud their actions if they are guilty, which still remains to be proved. If they are guilty of the offences of which they are charged, then I am sure it is not that we admire them or approve of their actions, but, on the contrary, I am sure a large body of thinking people feel that these young men, whatever be the provocations, are misguided in resorting to actions for which they now stand charged.

Now, Sir, the Hon'ble the Home Member asked the House that we must approach this question without prejudice, and impartially. Sir, I am sure the Hon'ble the Home Member himself tried his best to follow the same principle, but has he been able to apply the same principle when he brings this Bill before the House? Do the facts justify that? The last speaker, whom I am not going to attack, almost gave away the case in his concluding remarks when he said that the only way to break the hunger-strike is to pass this Bill.

Well, I am not concerned at present so much with the account that was given by the Hon'ble Member with regard to the treatment in jails of various classes of prisoners, but one thing is clear, and it is this. From the statement that

was issued by Bhagat Singh and Dutt, what is an admitted fact now, even from the speech of the Hon'ble Member who spoke last, is that they were not given the treatment—not on racial grounds—but according to the standard and the scale which is laid down for Europeans in the matter of diet and bare necessities of life. It is not a mere question that they want to be treated as Europeans. As a matter of fact, according to the admission and the definition given by the Hon'ble Member who spoke last on behalf of the Treasury Benches, so far as I know, Bhagat Singh and Dutt wear topees, and their figures appeared in shorts. Therefore, they ought to have been treated as Europeans. The Hon'ble Member in reply to a question said that whether the man is a European or an Indian—and he accepted the definition of my honourable friend Mr. Neogy—if one wears a topee, then one is a European for the purpose of jail rules. Then why should you not treat Bhagat Singh and Dutt, who wear topees and European clothes, as such for the purpose of treatment in jails? Why do not the Punjab Government give them the treatment that they are entitled to, at once, and be done with? They wear topees and they are entitled to that treatment.

What do they say in their statement which was read out? This is what they say:

> "We, Bhagat Singh and Dutt, were sentenced to life transportation in the Assembly bomb case, Delhi, on 19th May, 1929. As long as we were under-trial prisoners in Delhi jail we were accorded very good treatment and we were given good diet. But since our transfer from the Delhi Jail to Mianwali Jail and Lahore Central Jail, —

Which is represented by the Hon'ble Member, who spoke last—the Punjab seems to be a terrible place....

MIAN MUHAMMAD SHAH NAWAZ (West Central Punjab): Don't go there.

MR. M. A. JINNAH: I won't. To continue what they say:

> "We are being treated as ordinary criminals".

So, in Delhi they received very good treatment and in the Punjab they are treated as ordinary criminals. Surely, Sir, if the Government of the Punjab was not wanting in statesmanship, if the Government of the Punjab had any brains, they would have found a solution to this question very easily and long ago. But, Sir, it is a question—the more I examine it and the more I analyse it, I find—it is a question of declaration of war. As far as the Punjab Government are concerned, the Government do not merely wish to bring these men to trial and get them convicted by a judicial tribunal, but Government go to war against these men. They seem to me in this frame of mind: "We will pursue every possible course, every possible method, but we will see that you are sent either to the gallows or transported for life, and in the meantime we will not treat you as decent men."

Sir, the whole spirit behind this is that and nothing else. I do not for a moment wish to say that the Government are not bound—in fact, it is their bounden duty—to prosecute those people that commit offences. I do not wish to say that the Government should not do every thing in their power to see that their convictions are secured. But may I ask, with whom are you at war? What are the resources of these few young men who, according to you, have committed certain offences? You want to prosecute them, and after due trial, you want to secure their convictions. But before they are convicted, surely this is not a matter on which there should be this struggle, that you should not at once yield to their demands for bare necessities of life. After all, so far as the Lahore case prisoners are concerned, surely they are political prisoners and under trial. You ask me, what is a political prisoner? It is very difficult to define a political prisoner. It is very difficult to lay down any particular definition. But if you use your common sense, if you use your intelligence, surely you can come to the conclusion with regard to the particular case and say, here are these men who are political prisoners, and we do not wish to give them proper treatment. We want to give them treatment as under-trial prisoners. If you had said that, the question

would have been solved long ago. Do you wish to prosecute them or persecute them?

Sir, I do not wish to base my opposition to this Bill on this issue of bad treatment, because this is only one aspect of the issue, or rather one aspect of the Bill before us. This Bill has got to be looked at, as far as I can see, from three points of view. The first, from the point of view of criminal jurisprudence; second, political point of view or the policy of the Bill; and, third, treatment to the accused when they are under trial. I think it will be admitted, I think even the Hon'ble the Home Member conceded, that by the Bill which he has brought before the House, he is introducing a principle, in the criminal jurisprudence, of a very unprecedented character. I do not think, Sir, there is any system of jurisprudence in any civilised country where you will find such a principle in existence as is involved in this Bill. Some of the Hon'ble Members who are not lawyers might not have appreciated fully the implications of this Bill. This Bill not only dispenses with the presence of the accused at the trial, but I will give you a picture as to what will happen under this Bill. Under this Bill the Government will apply to the Magistrate before whom the inquiry is going on and say: "Here is a law which we have secured from the Legislature. Now the accused have voluntarily made themselves incapable of attending the Courts and, therefore, you have to dispense with their presence". The inquiry will then proceed *ex parte* before the Magistrate. Evidence will be led, oral and documentary, which will go without being tested by cross-examination. The documentary evidence will go without being even seen by the accused, against whom it is produced, and how will you identify the accused in their absence? Then we know, and particularly those who are lawyers would know, that when the Magistrate has concluded the recording of the evidence for the prosecution, under Section 209 of the Criminal Procedure Code, he must ask the accused whether he has any explanation to offer with regard to the evidence which is recorded by him against the accused. It is after that statement is made that the Magistrate has got the power either to commit or dis-

charge the accused. That statement of the accused under Section 209 is absolutely obligatory. It is not the choice of the Magistrate. The Privy Council has laid down that an omission in that regard would vitiate the whole trial. Under this Bill the accused will not be there to give any explanation to the Magistrate with regard to the evidence that has been already recorded *ex parte*.

Then, Sir, we come to important Sections. Under Section 287 that statement again will have to be made before the Sessions Court. There also, the accused will not be present. The evidence before the Sessions Court will be recorded *ex parte* and if it is a jury, the jury will be asked to return their verdict. If it is a case of assessors, they will be asked to express their opinion, and the Judge will pass his judgement or sentence, as the case may be. I ask the Hon'ble the Home Member, and I ask the Hon'ble the Law Member of the Government of India whether that will be a trial or a farce?

SIR BROJENDRA MITTER (Law Member): Not a farce. The accused can always go before the Court if he chooses to.

MR. GAYA PRASAD SINGH: But what about the evidence that has already been recorded in his absence?

MR. M. A. JINNAH: I am very glad that the Hon'ble the Law Member has given me a reply. Then you want by this Bill really to break the hunger-strikers. You want this House to give you a Statute laying down a principle generally in the criminal jurisprudence for this particular case, so that you may use it for breaking the hunger-strike in the Lahore case. Remember, you have no other case that you can cite. One swallow does not make a summer. It is the Lahore case. Well, you know perfectly well that these men are determined to die. It is not a joke. I ask the Hon'ble the Law Member to realise that it is not everybody who can go on starving himself to death. Try it for a little while and you will see. Sir, have you heard anywhere in the world, except the American case, which my honourable friend

Mr. Jamnadas Mehta pointed out, of an accused person going on hunger-strike? The man who goes on hunger-strike has a soul. He is moved by that soul and he believes in the justice of his cause; he is not an ordinary criminal who is guilty of cold-blooded. sordid, wicked crime.

Mind you, Sir, I do not approve of the action of Bhagat Singh, and I say this on the floor of this House. I regret that, rightly or wrongly, youth today in India is stirred up, and you cannot, when you have three hundred and odd millions of people, you cannot prevent such crimes being committed, however much you may deplore them and however much you may say that they are misguided. It is the system, this damnable system of Government, which is resented by the people. You may be a cold-blooded logician: I am a patient cool-headed man and can calmly go on making speeches here, persuading and influencing the Treasury Bench. But, remember, there are thousands of young men outside. This is not the only country where these actions are resorted to. It has happened in other countries, not youths, but grey-bearded men have committed serious offences, moved by patriotic impulses. What happened to Mr. Congrave, the Prime Minister of Ireland? He was under sentence of death a fortnight before he got an invitation from His Majesty's Government to go and settle terms? Was he a youth? Was he a young man? What about Collins? So what is the good of your putting forward this argument? You have got a situation which you have got to meet, not by introducing and enacting measures which go to the root of the fundamental principles of criminal jurisprudence, and lightly, saying, "Oh! but it is common sense!" Law is common sense; it is not common sense of one individual.

MR. PRESIDENT: I hope the Hon'ble Member is not inconvenienced when I ask him to resume his speech at the next meeting.

PANDIT MADAN MOHAN MALAVIYA: Sir, cannot we go on for another 15 minutes?

MR. PRESIDENT: What is the idea of going on for another 15 minutes? I can understand the House asking me

to sit till 6 o'clock, but there is no idea in sitting for another 15 minutes only.

The House was then adjourned. Mr. Jinnah concluded his speech at the next sitting, after the adjournment motion had been admitted for discussion.

Sir, when the House last adjourned I was dealing with this Bill from the point of view of criminal jurisprudence —and I brought to the notice of the House what would be the position if this Bill was passed, so far as the trial and proceedings of this particular case, or any other case under it, were concerned. It is quite clear, as I said, that the trial will be a travesty of justice. Let us consider the point further. The trial would proceed in the absence of the accused. I ask the Home Member, is there a Judge or jury who would feel that they were administering law or justice in that case? The moment this Bill is passed, the prosecution can go before the Court and say: "Here is a voluntary act of the accused persons; he has or they have incapacitated himself or themselves, and we ask you now to proceed *ex parte*". Remember, Sir, that in a particular case that procedure may be adopted from the very start. Even the plea of the accused may not be recorded, guilty or not guilty. Then the Judge will be asked to proceed to empanel a jury and the jury will be empanelled: You will have a Judge on the Bench and the jury by his side. What will they do? They hear the *ex parte* evidence, oral and documentary. I ask the Home Member, I ask this House, what would you consider of that Judge, what would you think of that Judge or jury, sitting there solemnly, seriously, proceeding with a charge of murder, going through this farce as His Majesty's Court—what conclusion do you think any jury can come to under those circumstances? That prisoner stands already condemned. What is the good of this farce? I say that no Judge who has got an iota of a judicial mind or a sense of justice can ever be a party to a trial of that character and pass sentence of death without a shudder and a pang of conscience. This is the farce which you propose to enact under this procedure! I say this, that if ever there was a conscientious Judge and he was strong enough, if he had a

judicial mind, and if he had any independence, let me tell you, that, in spite of this provision of yours, he would say, "True, the law has to be administered; I am obliged to make the order that the trial shall proceed *ex parte;* but I realise and I feel that it will be a travesty of justice and I cannot be a party to it; and I shall, therefore, adjourn this case until further orders". Have you considered that? I suppose you have not. It seems to me, Sir, that the great and fundamental doctrine of British jurisprudence, which is incorporated and codified in the Penal Code and the Criminal Procedure Code, has very wisely not made such an absurd provision in the criminal law of this country and I am not satisfied that there is a lacuna in our system of criminal law.

The Home Member said that it is a well-known doctrine and a fundamental doctrine of criminal jurisprudence that the man is taken to be innocent until he is proved to be guilty. May I remind him of another doctrine which goes to the very root of the criminal jurisprudence, or for the matter of that of even civil law, that no man is to be condemned until he is given a hearing? Sir, I think there cannot be the slightest doubt that we are now engaged in considering a cardinal principle, a principle of very vital and paramount character, to be introduced into the criminal jurisprudence of this country. It must be admitted that this is a most revolutionary, unheard of, unprecedented change that is proposed in our criminal jurisprudence. I know the Home Member will tell me, "Yes, the doctrine is that no man shall be condemned unless he is heard and until he is given a hearing; but here it is the voluntary act of the accused, and if he chooses not to go there and insist upon his being heard, it is his fault." Sir, this is not a new question; it has been considered in England and there is a long history about it and behind it and you will find that in old days there was the strictest formality observed as to the recording of the plea of the prisoner. And if the prisoner was mute of malice, that is to say, if he refused deliberately to open his mouth when he was arraigned in a Court of law and when the question was put to him as to whether

he pleaded guilty or not—he had to make his plea, and there are cases where he refused to speak, and the old law was—even England has advanced—in that case he was condemned and executed or must be committed to imprisonment........

MR. E. L. PRICE (Bombay: European): Torture.

MR. M. A. JINNAH: I am glad that you are up to date. I know that. I am only dealing with this one point, that he used to be executed or committed to prison. Further, when it was thought that it was rather a serious thing that, because a man was mute of malice, he should be condemned to death or imprisonment—then comes the point of my learned friend over there, who I understand is a member of the Bar—that they resorted to torture. Torture for what? That he should make his plea, not that an *ex parte* trial should proceed. That is what you want to do here by this Bill, that *ex parte* trial should proceed. The old law was then altered, because the result of the torture was that some of them died and the form of torture was the most cruel form of torture, and I will read to you a passage from Stephen's "History of Criminal Law":

> "If he was accused of felony, he was condemned, after much exhortation to the *peine forte et dure*, that is to be stretched, naked on his back, and to have 'iron laid upon him as much as he could bear and more', and so to continue, fed upon bad bread and stagnant water on alternate days, till he either pleaded or died."

But they did not proceed *ex parte*. Then the old form of trial was trial by ordeal. That was done away with because the plea that a prisoner had to put forward was in a particular form. When he was asked he had to say that he wanted to be tried "By God and by my country". That was the trial by ordeal. That was done away with and in 1827 by a Statute it was enacted that in such cases a plea of not guilty should be entered. Now, Sir, before that Statute was passed there is one case which I will bring to the notice of

this House and which will illustrate how much importance was attached to the form and the procedure even in olden days. Of course, my honourable friend Sir Darcy Lindsay will say that matters of this kind can be decided by the common sense of a single individual such as himself. Sir, I must remind him—for he is a man of peace, and especially when we get old we love peace, and common sense is sometimes regulated by that state of mind—, I will remind him, and I think the House will agree with me, that law is nothing but the essence of common sense, that law is the concentrated essence of experience, of knowledge, of practice of centuries and generations, and even Sir James Stephen will point out to you that, when these rules, when these forms have been laid down as the essence of common sense and experience of generations, they are not lightly to be departed from.

What do we find in this House now? Have we not got forms and are we not slavishly following them? Some of them would appear to the strangers in the gallery or any outsider to be most absurd and against common sense, at first sight. If any one passes across between you and the speaker he will be guilty of a gross breach of the forms of this House and you would call him to order at once. Why is that? Without meaning? Without reason? Without experience? What common sense is there? Why should the man not pass across? It is, therefore, no use treating these matters lightly and saying that we have got to decide everything by the common sense of an individual. The instance that I was going to refer to is this. In one case:

> "Mr. Pike produces some evidence to show that in the early part of Edward I's reign, people who refused to put themselves on their trial were executed......

Better, people who refuse to put themselves to trial, execute them, rather than go through the farce of an *ex parte* trial; much better.

> "......but this practice was opposed to the statute which provided that 'notorious felons' and which openly be

> of evil name and will not put themselves in inquests of felonies that men shall charge them with before the justices at the King's suit, shall have strong and hard imprisonment, as they which refuse to stand to the common law of the land."

Then he cites a case which I think will interest the House. He says this:

> " 'But this is not to be understood of such prisoners as be taken of light suspicion.' According to Barrington this meant that the prisoner who refused to plead was to be starved till he died, but not tortured—(so they improved later on)—and he quotes in proof of it a pardon granted in the reign of Edward III to a woman who *pro eo quod se tenuit mutam* was put in *arc:a prisona* and there lived without eating or drinking for forty days, which was regarded as a miracle."

Well, Sir, I know that there is a passage which is likely to be quoted in this House in Stephen's "Digest of Criminal Procedure". It is a curious thing that the Government of India, who have hardly given this House even seven days' notice and call upon this House to endorse a vital, cardinal principle of a novel or unheard of character, do not possess in their library even an edition of the "Law of Criminal Procedure" by Stephen of a later date than 1883. And they seriously ask this House, "The Government case is that they find that a deadlock is created. The law is paralysed, and in fact, even the Government of India might tumble down altogether, and we, therefore, call upon the Legislature to come to our rescue—we admit it is unprecedented, we admit it is unheard of, we admit it is unknown to any system of jurisprudence; but you as a responsible body—would you not endorse this Bill straightaway within these few 'days' notice?" You do not possess in your library an edition of a textbook which is the standard book except of the year 1883! And it is a tall order to ask the House to pass the Bill now and here. I will read the passage now, which is likely to be quoted, and I want the House not to be misled by it. But before I do so, I will request the Law

Member, to consider what I am going to submit. That is a branch of the law which comes under the category of contempt of Court, and we know that the King's Bench in England and Superior Courts in India, who have inherited the jurisdiction under the Charter, have got unfettered power to deal with cases of contempt. That is the one branch of the law which is neither codified nor restricted by any law. It is entirely left to the Supreme Court or the High Courts in India to deal with cases of contempt as they think proper. That is a branch which comes under that doctrine of law of contempt of Court and even there, while the Courts have asserted that they have the power to refuse to hear the party who is guilty of contempt of Court, the footnote says that it has never been done in a criminal case. I will read to you what it says:

> "The prisoner has a right to be present at the trial so long as he conducts himself properly, but the Court may, in its discretion, permit his absence in cases of misdemeanour, and may proceed with the trial in his absence in cases in which he has pleaded to an indictment or information in the High Court (Queen's Bench Division).
>
> "If a prisoner so misconducts himself as to make it impossible to try him with decency, the Court, it seems, may order him to be removed and proceed in his absence."

The footnote says this:

> "I have never known or heard of this being done, but Lord Cranworth (then Rolfe, B.) threatened to have Rush removed from Court, at his trial for murder at Norwich in 1849, if he persisted in a singularly indecent and outrageous course of cross-examination. I have heard from eye-witness an account of a trial before Shee, J. (then acting as Commissioner) at Dorchester, where the prisoner (a convict at Portland, tried for the murder of a warder) behaved with such desperate violence that it was necessary to

> fasten him down with chains and straps. He was not, however, removed from the Court, and it is obvious that in capital cases, or indeed in any trial involving severe punishment, almost any measures, short of removing the prisoner, should be resorted to."

The *raison d'etre* of this principle is very different and requires no more words to understand it. Now, Sir, I shall not weary the House with any further legal quotations. I am driven to think the object of Government in bringing in this Bill is political, but if their real object is to supply a lacuna, not for the purpose of this particular case, but in the general interest of the country and the administration of justice, if that is their object, let them remove this case from their mind, for Heaven's sake. Come to us dispassionately and without prejudice. Let them tell us that they find a lacuna, and that it is necessary to make some provision. If that is their object, then their honest and straightforward course is to come before the House and place all the facts before us. Now, I do not admit for a moment that there is a lacuna, and I do not admit that such a principle should be introduced in the criminal jurisprudence of our country, especially and admittedly when it does not exist anywhere else. I am prepared to assume that you honestly and sincerely believe that it is necessary, in the interest of the people and the administration of justice, that some such measure of the kind should be introduced. Then your honest course is to go slowly. Pause and consider. Let those outside this House who are competent to speak, express their opinion. What are you going to lose? What is the harm that will be done? Remove from your mind this Lahore conspiracy case. But if you say that this course will cause you inconvenience and that you want this instrument now and at once, then I say that I am not satisfied with your plea and I can't support it, nor am I satisfied with the version that you have placed before the House about your difficulties. I am not going to give you this power standing on the floor of this House, today, now and here.

Sir, can you imagine a more horrible form of torture

than hunger-strike? If, rightly or wrongly, these men are inflicting this punishment upon themselves and thereby you are inconvenienced, is that any reason why you should ask us to abandon one of the cardinal principles of criminal jurisprudence? If these young men pursue this course, and I am sorry to hear that one of them has died, what will happen? Is this a matter which can continue indefinitely? Certainly not. As I say, I am not satisfied with the version that you have placed before this House. I understand that some of the prisoners are not on strike. If you are solicitous and anxious that their trial should proceed and should not be delayed, then split up the trial. Proceed against them and bring home the guilt to them if you can. I am told that it means expense. I am told that 400 witnesses are going to be produced and 200 more may be added. Now, I appeal to the common sense of the House and not only of Sir Darcy Lindsay. Can you imagine that 600 witnesses are necessary to prove the case against each one of the accused? And, Sir, I ask, is it not an amazing fact that, in order to prove this case, 600 persons should have been cited as witnesses? Well, Sir, it may seem a joke and it may seem that I am making fun of the statement made to this effect, but the first impression that one gets is that, when a case cannot be proved without the testimony of 600 witnesses, that case is a very bad case. Therefore, I say that it is open to Government to split up the case. You think of expense? But are we here to abandon this cardinal principle because it is going to cost some money to Government? Is that the reason? Is that a plea which can be accepted by any responsible Legislature?

Well, Sir, I was told that some of them go on a hunger-strike for a short time and then they get better for a little while and again they start, and so it goes on. Sir, I cannot understand the anxiety of the Government to proceed with this trial when these men are inflicting the greatest possible punishment upon themselves by prolonged fasting? Is it your fault? Does it mean that you are not treating them properly and, therefore, you are compelling them to resort to these extreme methods? Well, then I appeal to you with

all the emphasis I can command, do not be vindictive. Show that you are fair, generous, that you are willing to treat these men decently. At any rate, before they are released or sentenced, give them proper treatment. What treatment do they want? What is it that bothers them? Do they want spring mattresses? Do they want dressing tables? Do they want a set of toilet requisites? No, Sir, they ask for nothing but bare necessities and a little better treatment. I ask you in all decency, why cannot you concede this small thing? Well, Sir, if this Bill is passed, perhaps I might ask the Hon'ble Member when he goes to Court how would he base his application? Will he base his application on the point that the period of a hunger-strike which has already taken place for a short period is not to be counted? Or is it to be counted? Supposing I tried to put myself in the position of a Judge when the application is made that the presence of the accused in this case should be dispensed with, because by their own voluntary act they have rendered themselves incapable. Now, from what period shall I take the disability? From the period after this Statute is passed? Shall I disregard the disability which has already taken place before the passing of the Act? Supposing something else happens to these men on hunger-strike and they do not get well for two or three months. Will the trial not be delayed? Do you think you can avoid considerable delay even if the Bill is passed? Further, can you give a guarantee that all the prisoners will be well enough in the course of these two or three months from now to stand their trial. Even if they abandon hunger-strike? When you say that this Bill will not have retrospective effect, how is it going to work? Then will you give them notice that in view of the fact that this measure is passed, if you do not cease your hunger-strike from today and if you are not better within two or three months, as you ought to be, then we shall apply to the Court that your presence will be dispensed with and we shall proceed *ex parte*? Does it not come to this, that you want to carry this Bill, you want to have this Bill placed on the Statute-book, and then you want to give notice to the prisoners that, unless they cease their hunger-strike within a certain period, you are going to

proceed *ex parte*? Under that threat you think these prisoners will cease their hunger-strike? Can you give the House that assurance, and if they do not cease their hunger-strike, what will you do? You will proceed *ex parte*? Just imagine the absurdity of the whole position.

Sir, now I have finished from the point of view of the jurisprudence. I do not wish to go into details so far as their treatment in concerned. I have, in the course of my speech, already indicated their grievances and how they can be met. But there is a political aspect of this Bill and the policy underlying this measure. I think the Hon'ble the Home Member must admit that this is not a measure which is only brought here for the purpose of putting the law in order. Sir, it reminds me of a story, an old Persian story. A man got stomach-ache because he had eaten some very rotten bread. So he went to the doctor and told him that he had stomach-ache. The doctor said, yes, and he promptly started treating his eyes. Then he said, "What have my eyes got to do with my complaint?" Then the doctor said, "Well, if you had eyes, you would never have got stomach-ache because you would not have eaten rotten bread". Similarly I would say to the Hon'ble the Home Member, "Have you got eyes? Well, if you had, you would never have got this stomach-ache". Now, will you open your eyes? Will you have a little more imagination? Have you got any statesmanship left? Have you got any political wisdom? This is not the way you are going to solve the root cause of the trouble. You may temporarily, provisionally, get over this particular trial. But now let us see what is the real cause of the trouble.

I ask this House to consider this. Is there today in any part of the globe a civilised government that is engaged, day in and day out, week in and week out, month in and month out, in prosecuting their people? You have read the daily papers for the last six, eight months. You will find prosecutions in Bengal, prosecutions in Madras, prosecutions in the Punjab, prosecutions all over the country. In fact I am afraid you will soon have to open a new department and to have an additional Member to manage these

prosecutions if you go on at this rate and in this way. Do you think that any man wants to go to jail? Is it an easy thing? Do you think any man wants to exceed the bounds of law for the purpose of making a speech which your law characterises as a seditious speech, knowing full well the consequences, that he may have to go to jail for six months or a year? Do you think that this springs out of a mere joke or fun or amusement? Do you not realise yourself, if you open your eyes, that there is resentment, universal resentment, against your policy, against your programme?

Then, Sir, what has happened so far as this House is concerned? What have you done since 1924 with regard to the protests that we have made session after session? Have you accepted the proposal or suggestion of any reasonable section of this House? I do not wish to go into the details, Sir, but what has been the attitude of the Government towards this House and the country outside over the constitutional reforms since 1924, leave alone the past prior history? The reply is: "We have appointed the Simon Commission and we must await its Report." Well, the Simon Commission was not accepted by this House—but that does not matter. What is the answer in regard to the Indianisation of the Army? You appointed a Committee to go into that very important question; I attach more importance to it than to any other question. What have you done with the unanimous Report of the Skeen Committee which was endorsed by this House, without a division, the responsible House as you call it today and to which you appeal today in the name of "responsibility"? This House endorsed that Report without a division. What have you done with it? The attitude of Government has been an amazing one. The Army Secretary stood there on the floor of this House last session and said: "We cannot get even 20 suitable candidates". Sir, the apparent untruth of that statement is enough to condemn the Government. You cannot get 20 young men out of 300 odd millions of people, who are suitable candidates for the King's Commission?

Then, there are many other matters. What has been your attitude always? Don't you think that, instead of try-

ing to proceed with an iron hand and pursuing a policy of repression against your own subjects, it would be better if you realised the root causes of the resentment and of the struggle that the people are carrying on? Don't you think that it is high time that you made your position more clear? I understand that there is something in the atmosphere—I hope it is true—that some satisfactory announcement is going to be made in Parliament very soon, when it meets next, which I trust will satisfy this House and the people. Do you want to prepare an atmosphere for it, or you do not? Do you want reconciliation between the Government and the people or you do not? Don't you think that these difficulties and troubles of yours are of a temporary character? They are an obstruction in the trial of this particular case which can be managed by other methods, but that is a very small matter when you compare it with the bigger issues which are awaiting the decision of the Government, this House and the country.

Sir, the Hon'ble Member asked, what are the Government to do? I think I understood the Hon'ble Member aright when he said that the Government have no other course. What are the Government to do? They are, therefore, compelled to bring this Bill. Now, let me tell you that your course is to open your eyes, have more imagination, do not be guilty of bankruptcy of statesmanship, do not merely sit there as if the wheels of the Secretariate must not be clogged at any cost, but try and understand the root cause and deal with the situation as politicians, as statesmen and not as bureaucrats, who can see no other way but to come forward before this House and ask for more statutory powers the moment any difficulty arises. You have got several courses open to you. The first and the foremost course open to you is this. Give these men decent treatment, and I think you will get over your difficulty. At least I hope so. If you do not, you will, at any rate, be exonerated in the eyes of the public and at the Bar of public opinion. Behave as a humane and decent Government, and that is enough for you. I am not going to urge upon the Government to withdraw prosecution cases against

men if they have evidence enough to bring home to them their guilt. So try that better treatment first. Secondly, if you do not succeed, split up the trials. Try those with whose trial you can proceed, and leave the rest. After you have made it clear to them that you stand for a decent treatment being given to them and they still wish to torture themselves and follow that course, then you cannot help it; and I venture to say that it will not last very long or indefinitely. And the last words I wish to address the Government are, try and concentrate your mind on the root cause and the more you concentrate on the root cause the less difficulties and inconveniences there will be for you to face, and thank Heaven that the money of the taxpayer will not be wasted in prosecuting men, nay citizens, who are fighting and struggling for the freedom of their country.

XIII

INDIANISATION OF THE ARMY

"Are you going to trifle with this House by saying that you have done a wonderful thing when you will take 200 years and more to get Indian officers for the Indian Army? You are trifling with the House. I can only say none are so blind as those who will not see."—Jinnah

Throughout the twenties, Mr. Jinnah consistently advocated the transformation of the British Indian Army into a national Indian Army. In one of his speeches on the subject he described this as the most fundamental problem in India, one on which the entire future of responsible self-government depended. The specific issues that came up for discussion in the Indian Legislative Assembly during this period were the demand for increase in the number of Indian officers holding King's Commission, the establishment of a military training institution, like Sandhurst, in India, and the pace of Indianisation of the Army. The story of British reluctance to concede these demands and the various phases of the process of Indianisation of the Army were narrated by Mr. Jinnah in his speech of March 10, 1928, which we have included in this chapter, and therefore it is not necessary to recount them here. Mr. Jinnah studied the subject thoroughly and came to be accepted as an expert on it. Apart from a reference to this fact from the President of the Assembly in March, 1928, it should be noted that he was appointed a member of the Committee set up in 1925 to study the desirability and practicability of opening a Sandhurst-like college in India. The Committee, which was originally called the Sandhurst Committee and later on came to be known, after the name of its chairman, Sir Andrew Skeen, as the Skeen Committee, collected evidence in India and then constituted a sub-committee to visit mili-

tary colleges in England, France, America and Canada. Mr. Jinnah was a member of this sub-committee also. The Committee's Report was submitted in 1926 but, while the Government of India did circulate the Report for discussion, it did not release the evidence collected by the Committee. This was one of the issues Mr. Jinnah steadfastly agitated. Finally, the Government of India announced in 1928 that it was not going to accept the Skeen Committee's proposals. On this, Mr. Jinnah moved an adjournment motion in the Assembly on March 10, 1928.

In view of Mr. Jinnah's interest in the matter he was appointed a member of the sub-committee set up at the Round Table Conference in London to study the defence problems. Mr. Jinnah took an active part in the sub-committee's deliberations.

Speaking in the Defence sub-committee of the first Round Table Conference, on January 7, 1931, Mr. Jinnah pointed out that out of the 3,000 odd officers in the Indian Army, only 70 or 71 were Indians. Every year some vacancies occurred and the question was how many of the 95 or 100 vacancies were to be filled by the Indians. Before the Skeen Committee was set up, the policy was to grant King's Commission to ten Indians every year. The Skeen Committee recommended 20 with an increase of four every year. Mr. Jinnah wanted a clear answer from the British Government as to how the goal of Indianisation of the Army, with the utmost speed, was going to be achieved.

Mr. Jinnah also spoke at length on the political principle relating to defence of India. In his speech he emphasised the need for reducing the British troops in India, reiterated his demand for speedy increase in the number of Indian Commissioned officers, called for the creation of a Sandhurst-like institution in India, and urged upon the British Government to determine a reasonable pace of Indianisation of the Army.

Calling for speedy Indianisation of the Army, Mr. Jinnah remarked: "Imagine 320,000,000 people with a history behind them. Does any man of common sense believe that we cannot

produce 120 boys per year who will be able to stand the most rigorous and strictest test of efficiency before they are granted King's Commission? That is question number one. We can give you the whole number straightaway. Are you prepared to accept it? If you want to Indianise the Army, if you really are in earnest, if you mean to hand over the defence of India as soon as possible to India, you can do it by saying, henceforth the total number of the wastage shall be recruited from amongst the Indians, and that will take you 35 years."

When somebody pointed out that there was a Territorial Army in India, Mr. Jinnah observed: "I wish there was a real Territorial Army in India, because in that case I should think we could reduce our standing army very much, and use the money which we are now spending on the Army for some urgent national requirements of our country." Lord Reading intervened to say that there was in India a Territorial Force of 20,000, and an Auxiliary Force of 35,000, to which Mr. Jinnah replied: "Let me tell you, Lord Reading, that in America there is a Territorial Force of nearly a million." Lord Reading again intervened to say that America had no standing army. In reply Mr. Jinnah said America had a standing army of over a lakh, and what they called 'Citizen Army' of nearly one million. He asked Lord Reading to look at the Report of the sub-committee of the Skeen Committee and let others see it, for it had all the relevant information. He said the Report had been suppressed by the Secretary of State for India and asked Lord Reading to induce him to publish it. Mr. Jayakar wanted to know more about the sub-committee's Report, and Mr. Jinnah said:

"This sub-committee which was appointed by the Skeen Committee to come to England, France, America and Canada, to collect materials on the various systems that prevailed in these four countries, and we spent something over 3½ months travelling round collecting those materials, and those materials will give you all the information as to what is happening in other countries like ours, such as America."

We are reproducing here four speeches by Mr. Jinnah on this subject. The first one was delivered on the 6th of

March, 1924, during the general discussion on the Budget. In this speech he exposed the Government proposal to recruit 10 Indians for Commission as farcical.

The second was made on the 18th of February, 1925, in the course of discussion on a Resolution moved in the Indian Legislative Assembly by Mr. B. Venkatapatiraju. The Resolution called for a recommendation to the Governor-General in Council that early steps be taken for starting a well-equipped military college in a suitable locality to train Indians for Commissioned ranks in the Indian Army Service and the necessary amount be sanctioned to start the preliminary work.

The third speech was delivered on the 25th of August, 1927, when the question of accepting the Skeen Committee recommendations was raised in the Indian Assembly. Dr. B.S. Moonji had moved a Resolution on the subject but later on an agreed amendment was moved by Mr. Srinivasa Iyengar which said: "Subject to the revision of the whole scheme of the defence of the country in any future Constitution for India, acceptable to the people of India, and while feeling that the recommendations of the Indian Sandhurst Committee, especially relating to the continuance of British recruitment, do not satisfy the Indian public opinion, this Assembly is of the opinion that the acceptance of the unanimous recommendations of the Committee will mark a definite beginning in the Indianisation of the Army in India, and therefore recommends to the Governor-General in Council that he may be pleased to accept those recommendations and give them immediate effect."

The Commander-in-Chief of the Indian Army announced on the 8th of March, 1928, that the Government had turned down the recommendations of the Skeen Committee. On the 10th of March, that is, two days later, Mr. Jinnah moved an adjournment motion in the Assembly to discuss this decision. Mr. Jinnah's fourth speech on the Army, included in this chapter, was delivered on this occasion.

-i-

Sir, the only part of the Budget that I wish to touch upon is the military expenditure. The military expenditure is one of the heads which is not votable. Apart from the question of the head being votable or non-votable, we are allowed the privilege in this House of expressing our views on that part of the Budget. His Excellency the Commander-in-Chief was good enough to say, as your Commander-in-Chief I advise the House to do this and that. I welcome that spirit. It is a new departure. But I may tell His Excellency the Commander-in-Chief that, while he was pleased to say that he is our Commander-in-Chief, unfortunately, we have no control over the amount that he spends, or his policy and, therefore, his word is the last word. But, Sir, as we are allowed, or we are privileged, to give advice in this Assembly under the Constitution, and taking that position in this House for the present I will offer a few observations. First of all, it is a fact that Rs. 63 crores of the revenue is allocated for the military expenditure this year. It is also a fact that it is a heavy burden on India. I do not think that the proposition which the Commander-in-Chief laid down can be disputed, that he must have a force, a military force, strong enough to defend India and to maintain internal peace and order. I do not think that it can be denied that it is a sound proposition for any country to adopt.

But, Sir, if it is stopped there, namely, that 63 crores are absolutely essential for the purpose of maintaining a defence which is necessary for our country, then no doubt the Commander-in-Chief's words must carry the greatest possible weight in this House. But the question is this. Has this got to be reduced or has it not got to be reduced? And, if the former, how? Now, one suggestion was placed before His Excellency the Commander-in-Chief, that the total number of what is called the British Army being 70,142, a portion of this ought to be done away with. That was one suggestion. If you do so, you will at once reduce the military expenditure by Rs. 7 crores or 8 crores, as the Hon'ble

Pandit Madan Mohan Malaviya suggested. It was suggested by some other Hon'ble Member again that the British troops could be done away with altogether. He asked: "Why do you want the British troops at all? Why not do away with the British troops and, if you want, increase the number of the Indian troops?" The total strength of the Indian Army, as far as I have been able to gather, is 137,056. That is to say, if you do away with, if I may use the expression, the white troops, increase the number of the Indian troops, and thereby you will be able to effect a great saving and yet maintain the necessary strength of the combatant forces. That is proposition No. 2. Proposition No. 3 is one which I will read to this House and is in the words of a great authority who happens to be the Prime Minister of England at the present moment. And this is what he says:

> 'A large part of the Army in India, certainly one half, is an Imperial Army, which we require for other than purely Indian purposes and its cost, therefore, should be met from Imperial and not Indian funds.'

Then he says, later on:

> 'A self-governing India would no doubt insist upon bearing some definite share in defence, but like the Dominions it would settle how much it ought to bear. It would adjust the cost to its means and it would decide in what form it was to make its contributions, perhaps an Indian recruited Army. In any event, the plan by which India pays for an Imperial Army stationed there, without in any way determining its policy, is as bad as it can be. If the existing system of Imperal defence is to last, the whole cost of the British Army stationed in India should be borne by the Imperial exchequer.'

A VOICE: What is the date of the book? 1920?

MR. M. A. JINNAH: Yes. It is not a very old expression of opinion, (*A VOICE*: ."*That is after the reforms*".) That is proposition No. 3. Now, I come to proposition No. 4, which I venture to make as my own. Sir, the

position is this, that today we have got, as I said, a British Army of 70,142, an Indian Army of 137,000; officers of the British Army are 2,092, and officers of the Indian Army are 2,078. The Commander-in-Chief said that it takes 40 years to make a Commander-in-Chief. I have no doubt of it. But we want only one Commander-in-Chief. But we have got to make many other things which the Commander-in-Chief has got to look after. The Commander-in-Chief also said that if you want a Commanding Officer, it takes about 26 years, namely, when he is raised to the rank of Lieutenant-Colonel in charge of a regiment. Now, we do not want all of them to be Colonels either. We require one Commander-in-Chief and a few Commanding Officers no doubt. But what is the scheme which you have got in front of us? The scheme, Sir, is so nebulous, if I may say so, that if the process which you are following, namely, that 10 cadets are to be sent to Sandhurst, and 10 is the number reserved, and I will assume that all these ten come out successfully every year, the question arises how many centuries will it take to Indianise the Army. Of course, you do not want 40 years or 26 years to make a subaltern. I think His Excellency the Commander-in-Chief will admit that we can make a subaltern within two or three years.

THE COMMANDER-IN-CHIEF: I did not deny it, did I?

MR. M. A. JINNAH: No. But, at present, your scheme gives us this. We can only get ten a year, and that is if they are all successful. I will take the highest figure favourable to His Excellency the Commander-in-Chief, that all the ten of them will succeed. How many years will it take for us to make 2,078 officers of the Indian Army? You must divide 2,078 by 10. The Hon'ble Pandit says that the number is much larger. Hon'ble Pandit is not quite correct. I am taking the number as 2,078 of the combatant force. You have got the Indian Medical Service and others.

PANDIT MADAN MOHAN MALAVIYA: Then it is 7,000.

MR. M. A. JINNAH: Of course, it is 7,000. I am taking

2,078 as the number which is required in the fighting forces.

PANDIT MADAN MOHAN MALAVIYA: It is over 4,000.

MR. M. A. JINNAH: I am talking of the Indian Army. There are two divisions. The other is called the British Army, and the officers are 2,092 in the British Army. I am now dealing with the Indian Army alone. I am for the moment talking of the Indian Army alone. I have got to get 2,000 officers, roughly, and if I am going to get ten men every year, how many years will it take me to get these 2,000 officers? (*VOICES*: "200 *years*", "*never*".) I am much obliged to the Hon'ble Members who slightly differ in their mathematics in totalling up and I do not blame them. Certainly it is such a long long time that it will shock anybody.

MR. C. DURAISWAMI AYYANGER (Madras): If every set of 10 people, got every year, be immortal, it will take 200 years.

MR. M. A. JINNAH: I ask the Commander-in-Chief, is that the only method, is that the procedure to which we are to be committed, and nothing more? He says, 'we have got a College at Dehra Dun'. Well, I welcome it. I may venture to differ from the Hon'ble Member who spoke before me, but I welcome it. I am never against any educational institution that is started in India. The more the better. It is no doubt that it will be the one source from which these ten recruits will be drawn. Now, Sir, how are these recruits drawn? There is no doubt, if I may say so most respectfully to His Excellency the Commander-in-Chief, that you are drawing these recruits by selection, and your Selection Board is guided by the family history of the boys who are selected. You may say that at present, as you have made a beginning, you thought that it was perhaps the best possible course to adopt. But it is open to many objections, and I do not wish to say anything more than to remark that it is a system which is not likely to get you the very best recruits that you want.

THE COMMANDER-IN-CHIEF: I am quite prepared

to admit what the Hon'ble Member has said with regard to getting recruits. Has he any other alternative to suggest because, if so, I shall be very grateful for it.

MR. M. A. JINNAH: The alternative that I have to suggest to Your Excellency is this, that you should have an Indian Member sitting by your side on that Bench with a sufficient amount of money at his disposal to make the Indian Army national, as soon as possible.

THE COMMANDER-IN-CHIEF: May I say that I should welcome the Hon'ble Member if he will come here?

MR. M. A. JINNAH: I am so glad that we agree but, unfortunately, the Government of India Act does not provide for it, but I hope that it will not be very long before the Government of India Act will provide for it. I shall proceed with my argument further. I further concede at once that, even if we are to get Indian officers in the place of English officers in the Indian Army, I am open to this criticism, 'how will you reduce your military expenditure?' Of course, I cannot, because I shall have to pay the Indian officers probably the same amount that I have to pay to the English officers. (*VOICES*: *"No. no. Much less"*.) There is no distinction when an officer is holding the King's Commission, unless this Legislature, when it gets power, decides to decrease or reduce the pay of the officers holding the King's Commissions. That is a different matter. I am now arguing on the footing of the pay which you will have to give to the Indian officers holding King's Commission. Our problem, therefore, cannot be solved by merely making this Army into an Army which will be officered purely by Indians. I am now dealing with the Indian Army. Then you will ask me, 'how are you going to reduce the military expenditure?' My answer is that you will never be able to do it so long as you do not put the Indian Army on the same footing as the Dominion Armies. It is the system that must change. So long as this system remains, unless you deport the white troops *in toto*, or unless you make it half, or unless you make the Imperial Exchequer pay a contribution on the ground that these troops

are required for Imperial purposes and not for Indian purposes purely, unless you get any one of these three courses, the problem will remain just the same as far as the military expenditure is concerned. But this cannot come about unless you get the system changed and follow the system of the Dominion Armies. It will be impossible for you otherwise to tackle this question properly. Now, on that point, what do we find? We have attempted to make some sort of a beginning in the shape of the Territorial Force. The Territorial Force was started, as it is put in Mr. Burdon's book, to whom I am thankful for giving me a copy, because it is a most valuable book inasmuch as it gives us really a good deal of information which, otherwise, it would have been difficult to get in one place. This is what it says, that the Territorial Force was constituted under an Act which was passed in 1920. After saying that it is primarily the outcome of the Montagu-Chelmsford Reforms, it goes on to say:

> "Self-government cannot be a complete reality without the capacity for self-defence, and when the first phase of representative institutions was established, the political leaders of India naturally claimed that the Indians should be given wider opportunities of training themselves to defend their own country. The Territorial Force is, in fact, one of the several aspects of the Indianisation of the military services which has been previously mentioned as an important feature of the present-day history of the Army in India. The Force is intended to cater, amongst other things, for the military aspirations of the people of India to whom military service has not hitherto been a hereditary profession. It is intended......'

This is the passage to which I wish to draw the attention of the House in particular:

> 'at the same time to be a second line to, and a source of reinforcement for, the regular Indian Army.'

Now, Sir, that is what we want. What have you done

about the Territorial Force? The limit is 20,000. What progress have you made? If I may here again say so, you started this in 1920. We have been at it for four years—nearly three years.

THE COMMANDER-IN-CHIEF: Two years.

MR. M. A. JINNAH: But what have we done? Very poor progress indeed, and why limit it to 20,000? I say here, if you will go on side by side with Territorial Force in right earnest and provide us not with ten cadets a year—for we want a great many more—if you will go on side by side earnestly as our Commander-in-Chief and push on with the Territorial Force, not limited to 20,000, but on the Dominion lines and, if necessary, even if we have to resort to compulsory training, do it, but not a training such as is given for two months, or three months, but a real proper training, a training which will enable those men to stand by the side of the regular army as a real reserve force—that is what we want. I say, Sir, that is far from being done. It is wholly unsatisfactory, and, unless His Excellency the Commander-in-Chief comes into this House with a proper scheme which will convince us of a real beginning, not a nebulous beginning, not merely a sort of (*A VOICE*: *"Eye-wash"*) just eye-wash, but a real thing, then I shall welcome it.

MR. R. D. Bell: Eye-wash is a very good thing for sore eyes.

MR. M. A. JINNAH: But what happens when you have got eyes? There are some who have got no eyes and will not see. Are you going to trifle with this House by saying that you have done a wonderful thing when you will take 200 years and more to get Indian officers for the Indian Army? You are trifling with the House. I can only say none are so blind as those who will not see.

THE COMMANDER-IN-CHIEF: I really want to remind the Hon'ble Member that his basis of calculation of the 200 years is a false one, because he takes the number of ten, which is the basis of that calculation, as

a permanent figure for all time. Now, I told this House in my speech yesterday that I contemplated an increase and I was very anxious that this number should be increased, and that I was enlarging the Dehra Dun College, for that purpose. Therefore, I object to the Hon'ble Member stating 200 years as a solid figure.

MR. M. A. JINNAH: I welcome it. I was only saying that this is what we have got at the present moment. I also invite His Excellency to come forward with a definite scheme. I have no doubt that His Excellency has got every sympathy with what I am saying. We want before us a definite scheme which will enable us, really, frankly and honestly, to tell you that we think you are really making a substantial beginning. I shall await its announcement. Sir, I do not wish to occupy the time of this House any longer. I hope that the result of this debate will soon put our Commander-in-Chief in motion and before long we shall have a real, substantial proposal, which will convince us that we are making a real, substantial progress in the direction both of officering the Indian Army and of making the Army a national army.

-ii-

Sir, before I got up, I was thinking whether I should address this House or whether I should address Mr. Burdon, the Army Secretary, or whether I should address His Excellency the Commander-in-Chief, or whether I should address the War Office, or His Majesty's Government (*A VOICE*: "*Not the Chair?*") . . Through the Chair. I am puzzled, Sir, whom to address: I do not know. Now, Mr. Burdon, in his speech, which was long, full of phrases, couched in beautiful language, full of caution, full of statesmanship, with a little bit of sermonising, never told us from his seat what is the position that he, representing the Government of India, wants to take up with regard to this Resolution. Why does he not frankly tell us—I can see it from his

speech—that he is nobody, and that he cannot do anything?

THE COMMANDER-IN-CHIEF: No.

MR. M. A. JINNAH: He meant that; he did. What did he mean? What is the attitude, I want to know definitely, what is the attitude of the Government of India, with regard to this question? I want an answer. (*A VOICE*: "You *will have it*.") Either say, as Mr. Burdon did, in 1923 that you cannot do anything or give us a frank answer as to what you can do. This is what Mr. Burdon said. Speaking on the 4th of July, 1923, Mr. Burdon said:

> 'The principal recommendations which remain unfulfilled are as follows:
>
> (1) The proposal that Indians should be admitted to the Commissioned ranks of the Royal Artillery, Royal Engineers and the Royal Air Force.
>
> (2) The proposal to increase to 25 per cent, of the annual total, the number of Commissions granted to Indians.

(This is the important portion).

> (3) The proposal to establish an Indian Sandhurst—

That is the one with which we are immediately concerned in this Resolution. Then what did he say? This is what he said:

> "Well, Sir, as my honourable friend has pointed out these Resolutions were adopted with the concurrence of the Government of India, and I may say that the proposals were duly laid before His Majesty's Government. But they have not been accepted."

'The proposals have been duly laid before His Majesty's Government, but they have not been accepted.' That was in July, 1923. What does Mr. Burdon say now? What is His Majesty's Government's verdict on this question? We heard nothing. When that Resolution was passed, Mr. Burdon said that it was a mishap. The amendment that was moved was

probably a mishap. Now, Sir, I have got the record here. I would particularly draw the attention of the House to the difference between the original Resolution and the amendment which was adopted. I am only reading the portion referring to this particular subject, because there are other things in the Resolution:

> '(b) the desirability of establishing in India a military college such as Sandhurst should be kept in view.'

So, the Mover of the Resolution was very cautious and I think it would satisfy even the ambition of Colonel Crawford. But some rash Member of the Assembly not following the wisdom of Colonel Crawford, with which I shall deal very soon, suggested an amendment. The amendment was as follows:

> 'That as soon as funds be available, steps should be taken to establish in India a Military College such as Sandhurst and the desirability of establishing in India training and educational institutions for other branches of the Army should be steadily kept in view.'

The amendment was accepted by the House. And it was after the amendment was accepted, and it then became the Resolution, that His Excellency the Commander-in-Chief, with full knowledge of that fact, got up and addressed the House and he gave his reasons, with which I do not agree. What he said was:

> 'For these reasons we accept the Resolution'.

THE COMMANDER-IN-CHIEF: Not the Resolution as amended.

MR. M. A. JINNAH: Certainly, Sir.

THE COMMANDER-IN-CHIEF: Certainly not.

MR. M. A. JINNAH: Well, Sir, then I should advise the Commander-in-Chief to have some legal advice before he gets up. The Commander-in-Chief forgets that the moment the amendment was carried by the House, that was the

Resolution. The other went. I dare say that perhaps with the soldier like attitude of His Excellency—frank, I quite agree—he honestly believed that he was really accepting what was rejected by the House.

But, Sir, now let us really get to this question, the question of establishing an Indian Sandhurst in this country. That is a question which is full of implications of very serious and far-reaching consequences. The first question that arises is this; that, if we are going to establish an Indian Sandhurst, it must by implication be understood that we must have a definite scheme, a scheme for the purpose of reorganising the Army, its constitution, its future composition, a scheme which will be a practical, workable scheme, which will Indianise the Army in the course of a reasonable period. It is no use merely having an Indian Sandhurst idea because as I say, what is the Indian Sandhurst going to do? (*The Commander-in-Chief*: *"The foundation of it"*.) Yes, the foundation of it. Yes, but if you are going merely to train up 10 Indians a year, I am afraid the Indian Sandhurst will be wasted. If it is only going to be established for the purpose of training up 10 Indians a year and out of that 10 a few might be qualified to get King's Commissions, what is the good of it? And that was Mr. Burdon's argument? That is what Mr. Burdon said: 'What is the good of having an Indian Sandhurst?' I do not want to read the whole of that portion, he will correct me if I am wrong. I am giving the substance of it. He said: What is the good of an Indian Sandhurst if you only want ten men to be trained up? Therefore, Sir, the questions which arise to my mind are these. I do not care who is to be blamed. I do not care who is standing in our way. I do not care who, whether it is a Secretary or whether it is the War Office or anybody else. I am concerned with the Government. It is no use saying that the Government of India are doing their very best but that the War Office are putting obstacles in their way. It is no use telling me that His Majesty's Government are against it. It is no use telling me that His Majesty's Government are not agreeable. That is no solace, that is no consolation, that is not meeting the

point. Do you honestly—I put this question in all seriousness and in all earnestness—do you honestly wish India to take up the defence of her country within a reasonable time? The answer is, 'Yes.' Mr. Burdon says: 'We are not inconsistent; we are not negligent.' Sir, let me tell you frankly, you are something much worse than that. If it was merely negligence, I could forgive you. If it was merely inconsistency, I could overlook and forgive you. But let me tell you, and I tell you quite frankly and fearlessly, that the charge against you is that you are not honestly convinced that you should help India to take up the defence of her country. I tell you that it is not merely I who say so, but even sober men who have grown grey, men who have been loyal to the Government of India, men like Sir Krishna Gupta, who have served you, say so too. I would ask the Commander-in-Chief to read his statement in the 'Indian Review' of January, 1925. What does he say? He doubts your *bona-fides*. India doubts your *bona-fides*.

THE COMMANDER-IN-CHIEF: They are wrong.

MR. M. A. JINNAH: I say, they have every justification. You have delayed beyond every reasonable time-limit.

THE COMMANDER-IN-CHIEF: No.

MR. M. A. JINNAH: Yes, you have, I may tell you, you have. You have not made a real, earnest, honest endeavour to enable the people of India to have a proper training in military matters.

THE COMMANDER-IN-CHIEF: I think we have.

MR. M. A. JINNAH: You come here with one excuse or another, and you tell us that there is this difficulty and that, there is this to be done and that to be done. Colonel Crawford, I think, represents the true mind of the large body of Englishmen. Has there ever been a proposal which we have suggested which was not rash, except perhaps the deputation in which Colonel Crawford joined? That was not rash, I suppose. When have you Englishmen ever agreed

with us and said that any proposal that we make is not rash? You say, 'It is rash, be cautious'. We have been 150 years under this Government. You have deprived the people of India of arms. What have you done? Colonel Crawford says today that you have got as against 12 British Officers, 17 Indian Officers. You have got the answer. Here is a testimony of the Hon'ble Member Captain Ajab Khan. What does he say to you on the floor of this House? Is he an officer or not? He is an officer only in name.

COLONEL CRAWFORD: May I explain to the Hon'ble Member, Sir, that in the British Service, the duties of platoon command are carried out by British officers. I pointed out that it is similarly the case in the Indian Army, the higher posts being retained by the British officers and the object was the elimination of the British officers from these higher posts.

MR. M. A. JINNAH: I say this statement does not meet the point at all. The point that we are concerned with —and Colonel Crawford who has certainly more experience of the Army than I do ought to know it perfectly well— is this. As it was pointed out to the Commander-in-Chief during the last Budget debate, what we want—and I am sure His Excellency the Commander-in-Chief understands it perfectly well and I am surprised that Colonel Crawford does not appreciate it, though being himself a Colonel he ought to know more than I do—is this. We have got this problem that today the officers in the Army, both British and Indian, are Englishmen. Only two or three years ago we were given the concession, as somebody would call it, of holding the King's Commissions, and you started it by sending 10 boys to Sandhurst. That was the first time in the history of British India that you granted the King's Commission to a few. Today the entire Army, both Indian and British, is officered by Englishmen. We desire that it should be Indianised. That is the issue. Does not Colonel Crawford understand that? What is the good of drawing a red herring across our path and talking about matters which are not relevant? That is the whole question. Although you may be

able to satisfy us, that perhaps there is a better method, or that there is a difficulty in the way of establishing a Sandhurst in India at present, it may be debatable, it may be arguable, but can we possibly discuss that question or that problem on the floor of this House, can we discuss the scheme on the floor of the House? Is it possible? We can only argue. If the Government wish to get rid of that charge, namely, that they are not quite in earnest, if the Government wish to remove that impression—and I say it is there throughout India, the soberest of men think like that—if you want to remove that impression that you are wanting in *bona-fides*, I appeal to you to appoint a committee with comprehensive terms of reference to tackle this question. And you may appeal to the War Office if you like, or to His Majesty's Government—I know your proposals will be turned down—but I do not want to mince matters and I want to put the issue clearly, that if you wish to satisfy public opinion in India on this question—and it is the most vital question, the most fundamental one, it is the foundation of future responsible government—if you wish really to satisfy public opinion here, we are willing to work with you, to associate ourselves with you. For Heaven's sake at once have a proper body constituted that will inquire into this question fully and thoroughly and let us have an honest and straight-forward scheme which will assure the people of India that you honestly desire that Indians should take up the defence of their own country within a reasonable time. Whatever that scheme may be—whether it may require 20 years, or 10 years or 100 years, I am not concerned with that at present, somebody may say five years, somebody may say tomorrow, somebody may say 100 years, I am not concerned with that at this moment—I want my military Commander-in-Chief, my military experts, my politicians and my members of the Civil Service and even Colonel Crawford and Sir Campbell Rhodes, who might think otherwise and think that we might be rash, so as to ensure that we should not be rash, I should like to have them there. Let them sit together as real well-wishers of India and the Empire and frame a scheme and let that scheme be adopted. I am sure, Sir, that

will satisfy India and you will then be able to repudiate the charge and I shall then stand up here again, if I am here, and say as emphatically and as fearlessly that you are acquitted of that charge of want of *bona-fides.*

-iii-

Sir, I really do not know how I should start to deal with this question. But to begin with, I congratulate His Excellency the Commander-in-Chief; at the same time I sympathise with him and I share his regret. Sir, I congratulate him for the statement which he made in his speech, and I am very glad that he made the position clear, with regard to one matter at least. That statement was this:

> 'They are prepared to face those issues, and they are prepared to give information regarding their policy after having due time for consideration'.

In other words, His Excellency the Commander-in-Chief made it clear that the question of the appointment of the Statutory Commission had nothing whatever to do with the consideration of the Report of the Sandhurst Committee. The Government of India are, therefore, prepared to face the Report and deal with it. Well, Sir, I congratulate him; to that extent it is a matter of some satisfaction. But may I ask His Excellency that he will do his utmost and not swerve from the statement which he has made on the floor of this House, and that he will pursue the matter vigorously and earnestly and leave no avenue unexplored until he has got the decision on the Report of the Sandhurst Committee? Sir, I sympathise with him and I share his regret, because he himself says in his speech as follows:

> 'I had hoped that today I might have been able to give this House some information as regards the policy of the Government in this matter. It is to me a matter of great regret that I am unable to do so.'

And we all know, and he made it very clear at the end of his speech, why he is unable to do so. He said:

> 'The Home Government, as I have already said, have not yet had time to formulate their opinions, and surely it will be best if they are not asked to do so in hostile atmosphere.'

Then he proceeded to say that he would certainly welcome the opinion of the Members of this House. He concluded as follows:

> 'I trust that this Resolution may not be pressed. If pressed, the Government of India will have no other recourse than that of opposing it for the reason I have given. But I am rather hoping that the present event may be regarded more as an opportunity for Members to state their opinions than as an attack upon Government.'

I am glad that he recognises that the Members of this House should express their opinions. At the same time he asks us not to put this Resolution to the vote. May I appeal to His Excellency to consider how any House, any organisation, and particularly the Legislature, is to express its opinion except by votes recorded on a division? Therefore, I cannot understand why the Commander-in-Chief says that we should not press this motion to a division. Sir, the opinion of this House can only be ascertained collectively by recording votes. I will, therefore, urge upon the House that it should take a division on this question and let us express our opinion whether we are in favour of Mr. Srinivasa Iyengar's amendment or not.

Having said so much, I come to my next point and it is this. The Government position is a non-possumus one. They say: 'We have not come to any decision and we can, therefore, say nothing'. Therefore, as one of the signatories of this Report, what can I say? I can only say to House that in the absence of any ground or any reason which may be put forward against this Report, you must accept this Re-

port. What is the objection to this Report? The only objection I can see has come from Colonel Crawford. I was amazed but I wondered, when I was listening to him, whether he was really representing the better mind of the Europeans even in this country. Then came the speech of the leader of the European group. He came to his rescue and his pronouncement, I may say, has regained to a certain extent the shattered reputation of the European party in this House. The leader of the European group spoke not only his mind and that of his party but of his people outside, who belonged to his race or community or caste; I don't know which. It was somewhat halting, hesitating. It lacked spirit. It had no enthusiasm of any kind and it merely said: 'Well, the Report is there. The Government have not come to any decision as to their policy. Therefore, Europeans in this country must cease thinking until the Government have made up their mind.' He had no opinion to express. Sir, the Europeans express their opinions strongly, loudly and vociferously when their particular interests are concerned, but this is to them a matter of no consequence at all. The other criticism that came from any quarter at all was a suggestion, 'Don't play with the Army'—a fine phrase indeed which conveys many things. But may I ask whether the Government wishes to continue to play with the people of India? Now, Sir, the policy of the Government has been laid down as far back as 1918. The Government of India laid down the policy of admitting Indians to the King's Commissions in the Army in India and Indianisation of the officer ranks. The Army in India, as the House knows, is not an Indian Army at all. They are His Majesty's Forces stationed in India. The policy was first initiated in 1918. That policy has never been repudiated, but on the contrary, over and over again, it has been affirmed in this House and even in Parliament by the Secretary of State. That policy was that you must Indianise the officer ranks of the Army in India. And, Sir, as my friend Munshi Iswar Saran pointed out, the question was raised in the first Assembly in 1921 and again in 1923. Then, as he pointed out, Resolutions were accepted by the Government. One of the parts of one Resolution was with regard to the establish-

ment of a Sandhurst College in India. Since 1924 I have had the honour of standing on the floor of this House and addressing the Government. I had pointed out in the very first year, in 1924, to Lord Rawlinson, that giving us 10 vacancies at Sandhurst is not playing with the Army but playing with the people of India. To say that 350 million people in this country cannot give you 10 boys who can be considered suitable and fit for King's Commission is, I say, an insult to the intelligence of this House. What was the plea in reply put forward? 'We cannot get suitable candidates.' Well, how is that matter to be decided? We pressed and we pressed, and in 1925 this House passed a Resolution for the appointment of a Committee and it was after great pressure had been put upon the Government by the non-official Members on this side that Sir Alexander Muddiman made a declaration in March 1925 that the Government would appoint a Committee. The policy was—and I do not want the House to forget it—to accelerate the Indianisation of the officer ranks of the Army in India. Those were, *inter alia*, the terms of reference to the Committee. The next question was whether we should supplement the British Sandhurst or whether we should establish a Sandhurst in India. The Committee, therefore, proceeded to investigate. And what is the position now? The position is this. You have got this Report consisting of 64 pages. And may I ask the Commander-in-Chief what justification there is for him, or the Government he represents, in suppressing and not making available to this House and to the public the materials collected by the Sub-Committee in England, in France, in America, and in Canada? May I ask him on what ground he can justify it? I may say on the floor of this House that, barring the evidence of the Indian cadets, no witness claimed any privilege or stated that he would give his evidence *in camera*. No such stipulation was made by anybody, either by official or other witnesses, nor by any of the authorities concerned, and I cannot understand on what ground the Government can justify the suppression of those valuable materials which were collected in those four countries. Sir, it is not doing justice to this House to ask this House to deal only with this Report without placing the

materials before them on which it is based. The findings in this Report are entirely based on the materials and the evidence which were collected both in this country and in those four countries that I mentioned. Even the evidence recorded in this country of numerous witnesses that were examined is not placed before the Hon'ble Members. I am sure if the Commander-in-Chief would kindly read the evidence recorded—I mean the evidence of educational authorities—if he had read it, he would not then have said as he did say that Mr. Das, the Law Member, was engaged in establishing a public school which would help us a great deal to solve the problem. I will read his words. The Commander-in-Chief said:

> 'In this connection I would like to refer to the efforts made by one of my colleagues, the Hon'ble Mr. Das. Mr. Das, as I think the House probably knows, is making the greatest efforts to establish in India a really fine public school. I sincerely trust that his efforts will meet with the success they deserve. He is working whole-heartedly in the matter, and, should he succeed in his efforts, I honestly believe we should have overcome the first of the many very great difficulties in the problem.'

Now, Sir, I do not want to be misunderstood. I wish my honourable friend Mr. Das every success, and I do not want to be misunderstood. But, Sir, is this problem going to wait until Mr. Das establishes a public school, and then only it will be solved? Is that the interpretation, is that the reading of the voluminous evidence of the educational authorities and the Sandhurst Committee's Report? Surely, Sir, it is obvious; you have only got to see what the recommendations are. The recommendations are shortly these. At present you have got 10 vacancies. The recommendations are that they should be doubled; and mind you, even the Army Council is not opposed to it. They say 'five per cent, of the establishment', which means 20 per year. Now we want 20 suitable boys—we want only 20 suitable boys—in the year 1928; and does the Commander-in-Chief suggest,

do the military authorities suggest, that you cannot get 20 boys in the year 1928, and that you must wait until Mr. Das establishes his public school? Then what is the revolutionary change that we suggest later on? 'Increase it by four per year': and we got to 40—mind you—in 1933. In 1933 we only get as far as 38 vacancies. You mean to suggest that you cannot get 38 suitable boys in the whole of this Continent? And must we wait for Mr. Das's public school? Sir, the Committee, remember, were considering the development of the educational system, the co-ordination of the educational system and the co-operation of the educational authorities and the educational organisations, with what object and effect? A Sandhurst which will be establishment in India, because, when you establish a Sandhurst or a military academy in India, the Committee then were considering that this military academy of yours, when established in India, will meet with much greater success, and there will be a greater competition, and the finest material will come up for admission to this institution in India. And it was in order to spur, in order to give the impetus to that object in view that the Committee have made those recommendations. You can, by developing your educational system in this country on the lines laid down in their Report, produce the finest material that you can find anywhere in the world. It does not mean that we have not got sufficient material now or that it would not be forthcoming. Therefore, Sir, Colonel Crawford and probably the Commander-in-Chief have in mind the system of public schools, I know the conservative British mind, and I do not blame them if they cannot get rid of it from their heads, that the only method in this world by which you can get suitable boys for a military career is the public school system. Now let me tell the House, Sir, that there is no public school system either in America or in Canada, or in France, or in Germany, or any other country that I know of. Now this is a matter which was very carefully considered, and an enormous amount of material was collected on this point, which, of course, neither the House nor the public has before them.

Now, Sir, this is one part which is made much of and

not correctly represented. If you look at the scheme, what will happen at the most will be this: that in 1933 we get as far as 38 vacancies. Later on, no doubt the number goes on increasing, but even then the highest number, recommended as detailed in the Appendix, will not be more than 125 Indians after 25 years, in 1952.

Now, Sir, we come to the question of British recruitment. We are told by Colonel Crawford who seems to be a great authority on the subject—I do not know how he gets all this information, probably he gathered this information at some club when he was in London last—that the British youth refuse to come out or will refuse to come out if the recommendations are given effect to. Colonel Crawford, Sir, is the messenger of the British youth and he has brought this message to this House and to India that the British youth refuse to work either in co-operation with or under Indian officers in the Indian Army on their merits. Is that the message of the British youths of India? What does he mean by saying that birds of the same feather flock together? What did he mean by suggesting that we should start a Dominion Army which will be entirely Indian? What did he mean by championing the 8-unit scheme? With regard to this 8-unit scheme, if he had read our Report—unfortunately, of course, it is true that due to the Government's wrong attitude he has not got all the material before him—he would have found that it was not only the Indian commissioned officers who objected to this 8-unit scheme, but every British officer commanding a regiment condemned it altogether. There was not a single witness who did not condemn it. When we went to England, the War Office even could not give us any convincing reason why this 8-unit scheme was brought into force. It was due to the decision arrived at the British Cabinet and the Cabinet, I am informed, consults what is called the Imperial Defence Committee. Now, Sir, we have fully dealt with the 8-unit scheme and our objections are to be found in the Report. But how was this 8-unit scheme exploited? It is to be found in the kind of lectures, a specimen of which we have annexed to this Report. Who gave this lecture? It was given by an officer.

And who is this officer? He is an officer in the India Office, and he goes to Sandhurst and tells the British youth that they will never have to serve under Indians and that is why this 8-unit scheme was started. It was a misrepresentation. It was misleading, it was poisoning the minds of the British youth. And Colonel Crawford is now the messenger who says that you cannot expect the British officers to accept your social conditions. What does he mean by social conditions? What has the army officers got to do with social conditions?

COLONEL J.D. CRAWFORD: Live in a mess and see.

MR. M. A. JINNAH: Live in a mess and drink. What do you want him to do, to have a drink? Well, he is quite capable of that. Have you not got 44 Indian King's Commissioned officers in the Army today? Even at Sandhurst—do they not share mess life? Sir, I again say, read the evidence, and I ask the Government to produce that evidence. Publish it.

Why did you not publish it? If you read the evidence, you will find that there was not a single European officer to whom this question was not put. Every European officer was asked whether he was getting on well with his colleagues, the Indian Commissioned officers. There was not a single European officer who said that he was not getting on well with his colleagues or with his subordinates. They had nothing to complain of. Then the Indian Commissioned officers are on the most friendly terms with the British officers and get on very well with them. They have got on with the British officers and get on very well, with the greatest affection and love for some of their colleagues. What is the good of saying, segregate the Indian officers from the British in the Army? I am surprised that we should be told today on the floor of this House by no less a person than my honourable friend that he has a brand new scheme which would solve this problem. I ask my honourable friend Colonel Crawford where was he when the Sandhurst Committee was sitting in India for eight months and recording the evidence and views of various people? Colonel Crawford

was in India. Sometimes he was next door to the room in which the Committee sat. Sometimes he even came into the room in which the Committee was sitting. Where was he then? Why did he not come forward with his magnificent scheme which he has now put forward before the House?

COLONEL J. D. CRAWFORD: I addressed a letter to the Skeen Committee.

MR. M. A. JINNAH: Why did he not put forward the scheme that he brought before the House in his speech the other day?

COLONEL J. D. CRAWFORD: I was not allowed to do so.

MR. M. A. JINNAH: Who prevented the Hon'ble Member from doing so? Well, Sir, this is the spirit of some which really brings discredit to the Europeans in this country. Well, Sir, you have a man of the position of Colonel Crawford, a Member of this House, connected with the military, a man with very wide experience, and yet he never came before the Sandhurst Committee, never cared to attend any of its meetings, but he now comes up here with his wonderful scheme. What is his scheme? I say that his scheme is absurd and impracticable. I know I shall be told that I am a lawyer and what do I understand about military matters? I admit I am a lawyer. But, Sir, may I draw his attention to the paragraph in the Report which certainly bears the signature of one of the greatest soldiers in India, Sir Andrew Skeen. Certainly there were on that Committee two Commissioned officers holding the rank of Major, and there were also two Viceroy's Commissioned officers on that Committee. What do they say about this? They all agreed to the proposals made in the Report. My honourable friend Colonel Crawford says: 'Why don't you train up Indian officers'. He says that by that means the Viceroy's Commissioned officers can become King's Commissioned officers. What does my honourable friend mean by that? I have great admiration for the Viceroy's Commissioned officers, they are brave men, they are heroic men, they have shown their

mettle on many a battle-front. I must not be misunderstood when I say that there are inherent difficulties in the way of Viceroy's Commissioned officers becoming King's Commissioned officers. Generally, a man becomes a Viceroy's Commissioned officer at the age of 40 or 45. He generally has to rise from the rank of a sepoy, who has no education.

COLONEL J. D. CRAWFORD: Sometimes.

MR. M. A. JINNAH: No, Sir. It is only now that we are making an effort to have them more or less educated to a certain extent, but it is merely elementary education with which they are equipped. Most of them can hardly read or write. We are making efforts just now to import men with some education. What is the scheme of my honourable friend Colonel Crawford, to prepare these men for King's Commissioned officers? Think of a man at the age of 45 being prepared for the King's Commission? Are we to send him to school? By the time he gets out of the school and is able to get the King's Commission, he will be 50. By the time he becomes a Captain, he would have come to the fag end of his service and would be made a Major or a Colonel, and certainly never a Lieutenant-Colonel which takes over 26 years of service.

COLONEL J. D. CRAWFORD: My exact words are these: "Instead of taking the men from the ranks at a very late age in life, after 15, 16 or 17 years' service, I think I would have taken them after about four years' service."

MR. M. A. JINNAH: My honourable friend Colonel Crawford forgets how old a sepoy will be when he is recruited. He is perhaps assuming that he will be 16 or 18 years of age when he is recruited as a sepoy. Why should he assume that? Even granting that he would be 18, here is the absurdity which I would point out to my honourable friend who claims to be the military authority. Whom will you get? A poor sepoy's boy. No man is going to join as a sepoy on a paltry pay of Rs. 17 if he has any guts in him and better prospects. You will get a man who is the son of a poor man, you will get a man who cannot find a paying

occupation anywhere else. How can you expect a boy of 18, who is a matriculate, to join as a sepoy? What kind of boy would you get then? What education can you give that boy? Then this boy is to remain in the Army as a sepoy. According to Colonel Crawford, he enters the Army at the age of 18. Then after five years you give him the Viceroy's Commission, and what has he to do thereafter? To prepare for his studies to qualify himself to obtain a King's Commission. It is the most fantastic, absurd and ridiculous scheme to be proposed by anybody.

And, Sir, what is more, we have dealt with the idea which is not new. If you turn to page 32, paragraph 28. We have shown in our Report the greatest solicitude and the utmost consideration for the soldier class and their sons. We have provided for them in various ways. Sir, one of the provisions comes under the heading of Grant of King's Commission to Viceroy's Commissioned officers. This is what we say: you have non-Commissioned officers in England who are occasionally imported into the Commissioned ranks for their exceptional merits. Similarly, we say that Viceroy's Commissioned officers should stand on the same footing as non-Commissioned officers and we recommend that Viceroy's Commissioned officers should be given opportunities of qualifying for King's Commission, analogous to those afforded to non-Commissioned officers in the British Army. We considered this to be feasible and have laid down how a certain class and a certain number, selected for the purpose, may be given that opportunity. And we say that we recognise that at the present time, the number of officers holding Viceroy's Commissions who would satisfy the above conditions is small, the reason being that direct Viceroy's Commissions are now seldom, if ever, granted, and that the standard of education prevailing among the classes which enlist in the ranks of the Indian Army is, as a general rule, very low.

THE PRESIDENT: I do not wish to interrupt the Hon'ble Member at all because I know this is his special subject and he is entitled to much greater latitude than others, but if his desire is that the Resolution should be

pressed to a division today, he must conclude within five minutes, otherwise the Resolution must go on to the next day.

MR. M. A. JINNAH: I am much obliged, Sir, I have really practically finished. I have dealt with education, I have dealt with Colonel Crawford's scheme, then I have dealt with British recruitment. These are the three matters with which the House is really concerned at present.

Now, Sir, I will only say this. I have got two more points which I want to put to His Excellency the Commander-in-Chief. The first, Sir, is this. I ask the Commander-in-Chief what has he done with regard to the question of the official guardianship at Sandhurst? Question No. 1. Question No. 2. I ask him what steps have the Government of India taken with regard to the question of admission of Indians to the Officers Training Corps at the universities? Sir, these are two matters which have nothing to do with high Imperial policy and they do not require, I take it, the consent or the approval of the Imperial Defence Committee. At any rate, so far as the guardianship is concerned, Sir, the House knows already that we have dealt with it. The present guardian, Colonel Stooks, is a man who has been proved beyond all doubt to be a hysterical, unsuitable and incompetent person. Now, the Committee have said that the present arrangements with regard to the guardianship are highly unsatisfactory. Of course, it is put in a very polite language. But if you could look into the record, which is still suppressed, you would have realised what sort of a guardian Colonel Stooks is. It is not merely that the Sub-Committee discovered it there. Let me tell His Excellency the Commander-in-Chief that complaints about him came before the main Committee before the Sub-Committee started, which have affected the good name of Sandhurst in India, and they were so serious that the main Committee actually formulated express instructions in writing for us on this matter, and when we went there the reports and information we already had were fully confirmed beyond doubt, and I would

like to know what steps the Government of India have taken with regard to that matter.

As to the Officers' Training Corps also you know that no Indians are allowed or admitted to the Officers' Training Corps of the universities there. It was pointed out that it was not fair, and we have not yet got a reply to it. It is dealt with in our Report also—that this works the greatest possible hardship. In the first place, the Indian who is at the university, if he wants to get a King's Commission, will not be allowed to claim an ante-date because, unless he has had training in an Officers' Training Corps, be cannot claim it. An Indian is not admitted and then refused the ante-date. So it comes to this that he is not admitted into the Officers' Training Corps, he is not allowed to claim an ante-date. Therefore, you go round and round. That is one handicap. The other handicap is that when you have a boy of particular age, at the university, that is the period of his life when this training is most useful and most valuable. He happens to be young and at the university and he is not allowed to enter the Officers' Training Corps. Therefore, when he comes back to this country at a maturer age, he cannot possibly then go in for the training with the same advantage and with the same valuable results, and cannot avail himself of the Indian Territorial Force which exists. It was said that the Officers' Training Corps is intended primarily for the British Territorial Army, but no Indian would care to be in it because I think there is hardly any Indian youth —there may be an exception here and there—who would stay on in England; most Indian boys who go there, come back.

These are the two points which certainly do not require either the approval or the consent of the Imperial Defence Committee or of the Cabinet, and I think the Government might give us some information with regard to those two points.

In conclusion, Sir, I would say this: I am aware that a certain clique exists in England. The India Office is sur-

rounded by it, and the only place that we went to and that had its atmosphere fouled by this clique was Sandhurst. At every other place, we were received and treated with every consideration, Sandhurst was the only place which was sought to be spoiled by this clique, and I say to the better-minded Europeans who are in this country and to the better-minded Englishmen in Great Britain, 'If this is your message from your youth, that they are not willing to co-operate, if they are not willing to work and take their rank according to their merits in this country, tear up the Declaration of August 1917, tear it up now and here, and say to the people of India, 'We are here to rule and nothing else.' Sir, I find there may be some difficulty because it may be said, after all you have got to deal with young men. But who is responsible for poisoning their minds? It was the same old story when the Indian Civil Service was being Indianised, when we were told in this country by many who now sit on the Treasury Benches, 'If you are going to Indianise the Civil Service we shall tender our resignation, we are not going to be your servants'. It was the same story when the Montagu-Chelmsford Reforms were introduced. We were told by many Englishmen that they would leave this country rather than submit to these Reforms as they could not work the Reforms. But we find, Sir, we have survived those threats, and I find that the Treasury Benches are full of those gentlemen some of whom probably had threatened to resign, but they probably thought better of it. But, I say, Sir, let us not be carried away by these threats."

THE PRESIDENT: The Hon'ble Member must thank himself if this debate goes over to another day.

MR. M. A. JINNAH: After that, Sir, I will say nothing more, and I will once more appeal to His Excellency the Commander-in-Chief not to swerve from the assurance which he has given on the floor of this House and not to play with the Indian people any more.

-iv-

Sir, in moving the motion for the adjournment of the business of the Assembly for discussing a definite matter of

urgent and public importance, namely, the question of the announcement which was made by His Excellency the Commander-in-Chief on the 8th of this month, I wish, Sir, in the first place to draw the attention of the House to a very short history of this question. It was in 1921—I do not wish to go beyond that—that this House passed a Resolution which was accepted by the then Commander-in-Chief, Lord Rawlinson, which ran as follows:

> 'As soon as funds become available, steps should be taken to establish in India a military college such as Sandhurst and the desirability of establishing in India training and educational institutions for other branches of the Army should be steadily kept in view.'

The original Resolution was amended and it was accepted by Lord Rawlinson in its amended form. Sir, I have the greatest respect for Lord Rawlinson. We miss him very much and we shall never forget his memory. I wish he was the Commander-in-Chief today. In 1923, an amendment was moved by Mr. Burdon, on behalf of Government, to a Resolution and the Resolution as amended was passed on the 4th of July, 1923, as follows:

> 'This Assembly recommends to the Governor-General in Council that he will be pleased to urge upon the Imperial Government the necessity for promptly giving effect to the Resolution Nos. 7, 8, 10 and 11 of the Assembly passed on the 28th March, 1921, in connection with the Esher Committee's Report, with the concurrence of the Government of India.'

The House will remember that Resolution No. 7 was passed on the 28th of March, 1921. In February 1925 the Resolution of Mr. Raju came up before this House and it ran as follows:

> 'This Assembly recommends to the Governor-General in Council that early steps be taken for starting a well equipped Military College in a suitable a locality

to train Indians for the Commissioned ranks of the Indian Army Service and the necessary amount be sanctioned to start the preliminary work'.

That Resolution was discussed at great length and Sir Alexander Muddiman moved an amendment, *inter alia*, which in effect was that a Committee should consider whether it is desirable and practicable to establish an Indian Sandhurst. We on this side of the House objected to that form, and said that we had passed that stage long ago. We had passed our Resolutions in 1921 and 1923, which were accepted by the Government, that the Indian Sandhurst should be established and the only thing that remained to be done was to see what steps should be taken to establish the Indian Sandhurst. In that controversy Lord Rawlinson very frankly made the following admission:

> 'The last two speakers have made it perfectly clear to me, and I suppose they think they have also made it clear to the House, that on the occasion upon which I accepted on behalf of Government an amendment and a Resolution both in 1921 and in 1923, I was not quite so well versed is the methods of this House as I am today. I, therefore, propose to go a little more warily now than I did then. I am not going to be caught napping again. Much as I appreciate the amendment proposed by the Hon'ble Pandit, I am sorry, it is quite impossible for me to accept it.'

Therefore, the Commander-in-Chief, on the last occasion, that is, in February, 1925, stuck to the position that the question before the Government was whether it was desirable and practicable to establish an Indian Sandhurst. Sir, that being the controversy, it was suggested, I think by me, that it was not possible to settle on the floor of this House whether it was practicable or whether it was desirable to establish an Indian Sandhurst. For the purpose of determining that question, you must have an inquiry and a thorough investigation. I think it came from me in the very commencement of the debate that a Committee should be appointed. I then said, 'Appoint your own Committee; have

your soldiers, have your civilians and have my European friends and have some politicians. But let us thrash this question out thoroughly and then let us see what is the conclusion that that Committee comes to.' Then, later on, Sir Alexander Muddiman, in March 1925, recognised and said that the time had come when this question must be taken up and he announced that a Committee would be appointed. The Committee was appointed by the Government of India. In the selection of it I had no voice, nor had anybody on this side. They chose eminent soldiers and a senior civilian, Mr. Burdon, a man of great ability, who had occupied the position of Military Secretary to the Government for a number of years. We had on that Committee that great soldier, Sir Andrew Skeen, for whom I have the highest admiration and respect for his sense of fairness, for his sense of integrity and his honesty—a more conscientious soldier you will never find in any part of the world. Sir, this Committee laboured for 14 months and it submitted its Report to the Government of India, or rather to the Viceroy, and after a long lapse of time, we heard the announcement about it yesterday. But before this, in the last Session of the Assembly in September, this House, without a division being challenged by the Government, entirely supported the recommendations of the Sandhurst Committee and recommended that the Governor-General in Council should take steps to give effect to them. At that time we were told that the matter was under the consideration of His Majesty's Government or the Secretary of State for India. Now, Sir, what is the announcement? The announcement is this, that instead of 10 vacancies, we shall have 20 and five—here I would ask my friend, the honourable the Military Secretary to Government, to correct me if I make any mistake because I only go by the newspaper reports that were available to me—I understand that instead of 10 vacancies, they are to be increased to 20, and five are to be reserved for the Viceroy's Commissioned officers......"

A MEMBER: And six at Woolwich and six at Cranwell......

MR. M. A. JINNAH: That means 37 altogether.

MR. G. M. YOUNG (Army Secretary): That is not quite correct. Six is the maximum which the War Office are prepared to give at Woolwich and at Cranwell not two, as recommended by the Committee, but a number will depend upon what is necessary to form an Indian Air Squadron. We want six in the first year.

MR. M. A. JINNAH: Therefore, I say that the utmost that you can go to is 37, based on the existing system which has been condemned by the Committee.

A MEMBER: In the first instance.

MR. M. A. JINNAH: In the first instance, and on Doomsday, it will be something more.

A MEMBER: It will be 38.

MR. M. A. JINNAH: So that you can go on happily. Now, Sir, that is the announcement. I want to make a statement on the floor of this House, and with all the responsibility, that this conclusion which the Government of India and His Majesty's Government have come to after this long period was practically arrived at by the War Council and was communicated to the Sub-Committee as soon as they arrived there in April-May, 1926. There is nothing new in it. It is a camouflage to tell us that this arises out of the recommendations of the Sandhurst Committee, after full consideration of the Sandhurst Committee Report which has been under examination for nearly two years. (*A MEMBER*: *"Shame!"*) I make that statement on the floor of this House and I challenge anyone to contradict that statement. That is the first thing, I have got to say.

Now let us see what the position is. The position is that the Commander-in-Chief has given his reasons for turning down the recommendations of the Sandhurst Committee. I do not wish, Sir, to exceed my time-limit, and all I say is this, that you will find that practically the whole of the recommendations of the Sandhurst Committee, which are interdependent and one connected link of a chain, stand toge-

ther. Our terms of reference, to which I may refer the House for a moment, were as follows:

> 'By what means it may be possible to improve upon the presest supply of Indian candidates for the King's Commission both in regard to number and quality.
>
> 'Whether it is desirable and practicable to establish a Military College in India to train Indians for the Commissioned ranks of the Indian Army'.

Now, Sir, the time-table, the establishment of a Sandhurst and the co-ordination of the educational institutions in this country are linked together, and you cannot drop one out of it and keep the other without seriously and materially affecting the recruitment of the best materials that you want; the means we have suggested are for improvement of the number and quality. They are not accepted. Then the reasons which we gave for the establishment of a Sandhurst are given in paragraph 35, and I will summarise in one or two minutes what we say. It seems clear that like the progressive scheme of Indianisation, which we have suggested, this step also is necessary as a means to improve both in number and quality the supply of Indian candidates for the King's Commission. I say now that it is necessary for the supply of candidates. Secondly, we say that India must have a self-sufficient institution for itself, and next we say that:

> 'On these grounds alone we think it would be sound policy to lay the foundations of an Indian military college as soon as possible and so commence without delay not merely the building of the college structure but the building also of the tradition and sentiment which in India, as in England, would be indispensable to the achievement of success. The process is one which takes time and the start should not be postponed.'

And, further, a saturation point will soon be reached, according to the best evidence, at the English Sandhurst, and so India will have to start her own institution.

Sir, we are told next that the question of the establishment of an Indian Sandhurst we cannot undertake or decide; when it will be decided, we do not know. The next and the most objectionable part of the pronouncement—and this is the most vital point—is the question of not only the continuance but the extension of the system of the eight units; and, Sir, about the eight units I have already said the other day what I had to say. It has not even the grace of the original declaration of the scheme made by Lord Rawlinson in February, 1923, because Lord Rawlinson at least made it clear in his declaration that when the intake increases of the Indian King's Commissioned officers, the surplus will be posted to other units. But the Commander-in-Chief now makes it quite clear that it will never happen; that they will start homogeneous units for the increased intake, so that never can an Indian officer command a British officer. He has made that clear. This is, Sir, the 8-units scheme.

Now, Sir, I will say one word and sit down, and it is this. We have been making these efforts for years and years and I do not go into the previous history. Starting even from 1921, it is a history that is no credit to the Government, Sir, and yet the Secretary of State for India, speaking recently, said this:

> 'Now, my Lords, I approach the present. It has been my duty to talk in the last three years to many distinguished Indians of every faith, every persuasion, every bent of political thought. I have asked all of those who were inclined to be critical of our attitude in relation to the future constitutional development of India this question: Do you desire that the British Army should be withdrawn from India? Do you desire that the Civil Service should be withdrawn from India? Do you desire that the protection of the British Navy should be withdrawn from the Indian shores? I have never found one Indian, however hostile to this Government, however critical of our proposals in relation to Indian development, who desired that the Army should be withdrawn, or.........'

THE PRESIDENT: I must ask the Hon'ble Member to conclude.

MR. M. A. JINNAH: I am not going to say anything more except to finish this quotation:

> 'or that the Indian Civil Service should be withdrawn or that the protection of the Navy should be withdrawn.'

Sir, I will only say this, it is simply not true.

XIV

RIGHTS OF PRESS AND ASSEMBLIES

"If you give me the freedom of speech I have the freedom to publish it, otherwise the privilege is useless."—Jinnah

The speech of Mr. Jinnah that follows has been included in this volume for two reasons. Firstly, it throws further light on his deep concern for the freedom of the Press and the rights and privileges of the Members of the Legislature, and, secondly, it was one of the rare occasions that Mr. Jinnah, despite his arrival on the scene at a late moment, engaged the President of the Assembly in a running argument. The occasion was this.

The daily newspaper 'Abhyudaya', published from Allahabad, had reproduced a speech of Pandit Krishna Kant Malaviya that he had made in the Legislative Assembly of India on the 6th of September, 1935, on the Criminal Law (Amendment) Bill. Pandit K. K. Malaviya was also the owner of the daily. In January, 1936, the publisher of 'Abhyudaya' was served with the following notice by the Governor of the United Provinces, under Section 7(3) of Indian Press (Emergency Powers) Act, 1931:

> "Whereas it appears to the Governor in Council that the 'Abhyudaya' newspaper of Allahabad contains in its issue dated October 15, 1935, an article headed *Assembly men Pandit Krishna Kant Ji Ki Baktrita* (Speech of Pandit Krishna Kant in the Assembly), which contains words of the nature described in the sub-section (I)(b) of Section 4 of the Indian Press (Emergency Powers) Act, 1931, an English translation of the objectionable passage of which article is attached to this notice. Now, therefore, in exercise

> of the powers conferred by sub-section (3) of Section 7 of the said Act, the Governor in Council hereby requires you to deposit with the District Magistrate of Allahabad security to the amount of Rs. 2,500 (rupees two thousand and five hundred) only, in cash, on or before January 25, 1936."

On the 24th of January, i.e., one day before the expiry of the time provided for depositing the security, the newspaper ceased publication.

Sardar Sant Singh gave notice of a motion for adjournment of the business of the Assembly on the 3rd of February, 1936, to discuss this order of the U.P. Government as being 'a definite matter of urgent public importance'. The motion was disallowed by the Governor-General on the ground that it related to a matter which was not primarily the concern of the Governor-General in Council. On the 5th of February, 1936, Sardar Sant Singh gave another notice of a similar motion for adjournment, this time in order to raise the question of 'the encroachment on the privilege of the Members of the Legislatures to publish their speeches in verbatim'. This motion was also disallowed by the President of the Assembly on the ground that a question of privilege could not be discussed on a motion for adjournment and also on the ground that the notice of the motion ought to have been given at the earliest possible opportunity. Sardar Sant Singh tabled a third adjournment motion on the 10th of February, which was as follows:

> "In view of the action of the Local Government in demanding security from the 'Abhyudaya' of Allahabad for printing the full text of the speech of Pandit Krishna Kant Malaviya made in the Assembly......the Assembly do proceed to discuss the question of the privilege of the freedom of speech and its publication in the Press enjoyed by the Members of the Assembly."

Objection was taken to the admissibility of the adjournment motion by the Leader of the House, Sir Nripendra Sir-

car, who contended that since it did not relate to 'an urgent matter of privilege'—which was a condition precedent to the discussion of an adjournment motion moved without the requisite notice having been given—the motion could not be admitted for discussion. His other grounds of opposition to admitting the motion for discussion included an undue delay in moving the motion and the absence of a *prima facie* case to justify its discussion.

There ensued a long debate on the points taken up by the Leader of the House in his speech opposing the admission of the motion for discussion, after which the President announced the deferment of his ruling to a later occasion. He finally gave his decision on the 27th of February in which he ruled the motion out of order for various reasons which he enumerated in great detail.

Mr. Jinnah participated very keenly in the debate on the admissibility of Sardar Sant Singh's adjournment motion, and his speech bears ample testimony to his views on this sensitive subject:

Sir, the matter is of such great importance that I would like to draw your attention to one or two points. The first question that the Hon'ble the Law Member raised was the question of delay. I really think that you will not accede to that argument, because, if there was any delay, it was a delay not due to negligence on the part of the Hon'ble Member who has moved this motion; he was pursuing his remedy. In the first instance, he came forward and brought this motion, it did not succeed; in the second instance, it does not succeed; and he has brought it in the course of the last two days. The delay means what? It means really that the other party has been guilty of very great negligence. On the contrary, the Hon'ble Member has been pursuing his redress and remedy most actively. Therefore, I submit that the question of a day or two ought not to weigh with you at all in a matter of this kind. Then, the second question that arises is this. *Prima facie*, it appears from the order of the Government of the United Provinces that this security is demanded from this newspaper on the ground that it published a speech of the Hon'ble Member made on the floor of this House. That is the *prima facie* justification for the demand of the security. If that is so, let us examine now whether there is a breach of privilege. It cannot be denied that Hon'ble Members of this House have privilege to make a speech with the utmost freedom, to use any lauguage they like, subject to your orders......

. *THE PRESIDENT* (Sir Abdur Rahim): And the Rules and Standing Orders.

MR. M. A. JINNAH: Subject to that, we have complete freedom to make any speech that we like, express any opinion that we like; and we are not liable to any action outside by any Court, civil or criminal. I think that will be conceded. Now, let us take this instance: Suppose the United Provinces Government, or, for the matter of that, this highest and mightiest Government of India were displeased with my speech on the floor of this House, and supposing they pass some executive order against me under the Criminal

Law (Amendment) Act, which is subject to no judicial examination, and supposing they stated the reason there, that this action was taken against me by the Government of India on the ground that I made a seditious speech on the floor of this House. If that reason is given, where is my remedy? Not in a Court of law. It is an executive order. Where can I go? To whom shall I appeal? I say, this House.

THE PRESIDENT: Suppose the Government take action on the basis of any law?

MR. M. A. JINNAH: I say I have no remedy. It is an executive order. If it was a case of my being prosecuted in a criminal Court, I would certainly say I was privileged, and the Court had no jurisdiction to try my case—that the Government of India Act lays that down. If I was pursued in a civil action for damages against me, because I had libelled somebody, my defence will be "Privilege: Government of India Act". Now, if the Government of India make an order against me—an executive order—that because I happened to make a speech which was undoubtedly seditious—no question about that, I admit it is seditious—then I have no remedy in any Court of law. Am I not then entitled to come to this House and say that we must proceed to discuss this question whether the Government have not done something which no Court of law can do? It is a breach of my privilege. I have a right to make a speech, and I have a right to have it published; that cannot be disputed......

THE PRESIDENT: The Chair does not know that it is not disputed.

MR. M. A. JINNAH: No, Sir; I have every right, subject to this, that it is a fair and faithful publication. I am talking of a Court of law. In a Court of law, I cannot be held liable, provided I get a fair and faithful report of my speech published......

SIR NRIPENDRA SIRCAR: My Hon'ble friend may be right, but it was not conceded; I shall maintain the contrary......

MR. M. A. JINNAH: I do not quite follow......

SIR NRIPENDRA SIRCAR: That there can be no action in a Court.

MR. M. A. JINNAH: If it is a fair and faithful report?

THE PRESIDENT: He disputes that.

MR. M. A. JINNAH: Here is the authority. I am talking of the general principle of law; I am not talking of our Statute for the moment. The general principle of law, which is as old as the hills, so far as the English law is concerned, is that nobody is liable, provided the report is fair and faithful. Here it is laid down in May's Parliamentary Practice at page 108-109......

THE PRESIDENT: Does the Hon'ble Member mean Watson's case?

MR. M. A. JINNAH: Yes, Sir. The Lord Chief Justice of England, in a more recent case, further laid it down, that 'if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair and so would not be privileged', but that a fair and faithful report of the whole debate would not be actionable.

THE PRESIDENT: The whole debate.

MR. M. A. JINNAH: Let us go step by step, Sir. I say, first of all, supposing a newspaper published the proceedings of the debate, and, in publishing the proceedings of the debate, there was that objectionable speech also. That is a fair and faithful publication of the whole proceedings: That would not be actionable.

SIR HENRY CRAIK: Against a newspaper it would be actionable.

MR. M. A. JINNAH: But we are talking of the newspaper: it is the newspaper that is now here, not the Hon'ble Member. If the Hon'ble Member was here, then there is no action: It is clear as daylight that the Hon'ble Member has the privilege: That cannot be questioned. If it was the

Hon'ble Member who was proceeded against by anybody, then it would be a clear breach of privilege. That question would be quite a simple one. But the question now before us is more difficult. I want to be quite fair. I do not want in any way to represent things which are not correct. As I say, the question here becomes more difficult, because we have a different entity; it is the newspaper. And the question is this: it is very simple if I may put it in a very few words—I do not want to take up too much time—a newspaper no doubt is open to action against it if it is found that it has published something which is offensive according to law, either civil or criminal. But if it was a Court of law, it would be open, according to the Rules, to plead that it is the privilege of a Member to have his speech published, that it is the privilege of the newspaper to have the proceedings published; and so long as they are true, fair and faithful, it is not liable to any action. Now, is there no remedy—there is no remedy as far as I can see—against an executive order? Is that question now to be decided by this House or not? I say that the only remedy open to us is that we must at least lay down some rule—surely the executive authorities must be governed by some rule, by some principle. Is there to be no rule, no principle for the executive authority? Are we not entitled, therefore, to say that while, with regard to the normal position, even the highest tribunal in the land has to observe certain principles upon which they have to act, the executive has no principle to act upon?......

THE PRESIDENT: What are those principles?

MR. M. A. JINNAH: The principle is this: freedom of speech; this is the answer for you to consider, that the freedom of speech gives me a right to publish it, and that I am not punishable. That is the question we have to decide, that the executive, wherever they are, have to observe this rule; that once I have the privilege of freedom of speech, it gives me as a consequential privilege, the privilege of publishing it......

THE PRESIDENT: The Hon'ble Member says that whatever action a Court may take is a different matter; but

if the executive authority takes any action, this House's privilege is affected, and this House can take action?

MR. M. A. JINNAH: Yes, Sir, that is the whole of my argument; and I say, therefore, this House must discuss and express its opinion—it is for the Hon'ble Members who represent the Government of India to observe it or not......

THE PRESIDENT: How does the Hon'ble Member express that opinion?

MR. M. A. JINNAH: This way, Sir. The same rules must be followed as you would find with regard to a Member who has a right to publish his speech. I have a right to publish my speech. If you give me the privilege to stand here and make a speech, which I consider are my honest, independent, fearless views, why am I not, as corollary, entitled to publish it? Of course, a true and faithful speech, and not a different one. Why am I not entitled to publish that and request my friends who are just above me to publish it?

A MEMBER: The Fourth Estate?

MR. M. A. JINNAH: Why am I not entitled to publish it?

SIR HENRY CRAIK: The Statute lays down that you cannot.

MR. M. A. JINNAH: Where is the Statute?

SIR HENRY CRAIK: Section 67 (7) of the Government of India Act.

MR. M. A. JINNAH: I have read that Statute and it clearly says this:

> "(7) Subject to the Rules and Standing Orders affecting the Chamber, there shall be freedom of speech in both Chambers of the Indian Legislature. No person shall be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any

official report of the proceedings of either Chamber."

This is not exhaustive. This merely gives direction of all kinds. Firstly, it is a protection to the person who makes a speech, and, secondly, it is a protection to those who, under the official orders, have to publish the official report: but that does not exhaust the whole thing. This does not mean that every person, if he gets his speech published, is liable to action. My point is this. If you give me the freedom of speech, I have the freedom to publish it, otherwise the privilege is useless.

MAJOR NAWAB AHMAD NAWAZ KHAN: May I ask one question, Sir......

SEVERAL MEMBERS FROM OPPOSITION: Order, order.

MR. M. A. JINNAH: Therefore, I say, Sir, with great respect, that this is not exhaustive, and that is the very reason why I am anxious in a matter of this importance......

THE PRESIDENT: The Hon'ble Member has got a right to publish it?

MR. M. A. JINNAH: Yes.

THE PRESIDENT: What authority has the Hon'ble Member got for it? Has he any authority for it, or he is merely proceeding on a general principle?

MR. M. A. JINNAH: Sir, to tell you quite frankly, I really had no intention to get up and speak on this subject, because I only learnt very late that a question of this kind was coming up. Till this morning, or, for the matter of that, until luncheon time, I had not applied my mind to this. The matter is so important that it requires very careful consideration, and, therefore, I cannot answer......

THE PRESIDENT: If there is a *prima facie* case, then the Chair can fix a date.

MR. M. A. JINNAH: There is certainly a *prima facie*

case; there is not the least doubt about it, because, Sir, if you will read the order you will see......

THE PRESIDENT: The Chair says this, subject to any other objection taken by the Hon'ble the Leader of the House, for instance, that it cannot be brought on an official day.

MR. M. A. JINNAH: There again, Sir, I say with due respect, the Hon'ble Member is overstating his case, for, Sir, under our Rules, the Governor-General no doubt lays down certain days for our business, but if you follow the Parliamentary practice in regard to a motion of this character, the moment such a motion is admitted, it follows that all our normal business must be suspended. It takes precedence over everything else, and the Government have, therefore, to find some day. If the Governor-General does not give us any more days, that does not absolve the Government, the moment the motion is admitted, from giving some day......

THE PRESIDENT: It is not a question of admission of this motion. The Chair has allowed it, because it was not sure what would be the position. It is a very important question, and so the Chair just allowed it to be argued.....

MR. M. A. JINNAH: Supposing we have to discuss the merits of this motion, then some day must be given, and so the argument that there is no other day available will not do.

THE PRESIDENT: The Chair does not think it made itself clear. The objection is that a motion to consider the question of privilege cannot be brought in on a notice like this......

MR. M. A. JINNAH: On an adjournment motion.

THE PRESIDENT: As regards the adjournment motion, the Chair has, as a matter of fact, given its ruling that the matter cannot be brought up on an adjournment motion, but the Chair would be prepared to reconsider that. The

Chair decided the previous motion, on another ground as well, as it said in the very beginning, that it was not in its opinion, urgent according to the Rules.

MR. M. A. JINNAH: You decided on the ground, first, there was a delay, and, secondly, there was no kind of breach of privilege.

THE PRESIDENT: The question of privilege could not be brought on an adjournment motion.

MR. M. A. JINNAH: The subject matter of privilege.

THE PRESIDENT: What was passing in the Chair's mind was the question of breach of privilege. It was not a question of adjourning the business and censuring the Government. The House might take action to remedy such a breach of privilege.

MR. M. A. JINNAH: Therefore, Sir, the only procedure open to us is this, that a day should be fixed. The moment the day is fixed, then, on that day, this question should be put down as to what steps, if any, should be taken.

THE PRESIDENT: The reason why the Chair has allowed this question to be raised is to find out what would be the proper procedure. The Chair could, of course, having considered it itself, have disallowed it on the ground that it could not be brought on an official day, but the Chair wanted to consider the question whether the House is debarred by its Rules and Standing Orders from taking up such a question on an official day. The Chair wanted to consider that. Of course, much time of the House has alreday been taken up, but it could not be helped.

MR. M. A. JINNAH: My only reply is this, Sir. There is nothing in our Rules, and, therefore, we have to fall back upon the Parliamentary procedure as far as possible......

THE PRESIDENT: The contention of the Hon'ble the Leader of the House is that our Rules prevent any other matter being discussed on an official day without the consent of the Governor-General in Council......

SIR MUHAMMAD YAKUB: Any other business?

THE PRESIDENT: The Chair takes it this is business.

SIR MUHAMMAD YAKUB: There is difference between business on the agenda and matter.

THE PRESIDENT: The Chair could have disallowed the motion on the ground......

MR. M. A. JINNAH: This is neither official nor non-official business. This is the business of the House, and it must take precedence over everything else, including the Government business, because it is the business of the House. I think the Hon'ble the Law Member himself is involved in this as much as anybody else, because it is his privilege also. It might really come to this, that some action might be taken against him for making a speech here.

SIR NRIPENDRA SIRCAR: I would rather have that than waste two days of time of this House; I would rather welcome action against me than waste the time of Members of this House.

THE PRESIDENT: If the Chair holds that this Rule does really debar this motion being brought up, the Chair will really be itself responsible for the time that has been taken up. The Chair was doubtful, and, therefore, it wanted the question to be discussed.

MR. M. A. JINNAH: May's Parliament Practice says:

> "Proceedings of the House may be interrupted at any moment, say, during the progress of a division, by motion based on a matter of privilege when the matter has recently arisen which directly concerns the privileges of the House."

......

It is business—in one sense it is business. I cannot say it is not business, because everything we are doing here is business. When you look at the Manual, it really means a particular kind of business, that is, such work or such matters as the Government may bring up on official days or

such work or matters as the non-officials may bring up on non-official days which are alloted by the Governor-General. Therefore, this is business. But it is not business which is intended by these Rules; it is outside these Rules; it is not covered by these Rules. If you have no cut and dried Rules which deal with a matter of this character, you will have to fall back upon the Parliamentary practice, the Parliamentary practice which this House follows and which you and your predecessors followed in giving their rulings. You are not tied down by these Rules. Government have got to give some day. Either they put it on an official day, or if they like, they can appeal to the Governor-General to appoint a special day. Otherwise, what will be the consequence? In that case, you will never have this sort of matter discussed at any time in this Assembly.

SIR HENRY CRAIK: By Resolution.

MR. M. A. JINNAH: This is not an ordinary matter: this is a matter which at once gets precedence; it even goes to this length that even when you are debating, even when you go on debating an important measure, even then it can be interrupted except the actual division. The whole principle is different. You cannot give notice of a Resolution which has to be balloted for. It is not intended that a business of this kind, a subject of this character should be dealt with by that way. Therefore, it must take precedence over everything. I do ask the Hon'ble Member really that we must try and maintain the dignity of the House. I am speaking earnestly, not because what the result may be ultimately, but I do think that this is a very serious matter, a matter of great importance, of great importance to the Members themselves as well as the Press in the country. Therefore, I do submit that this matter ought to be allowed to be discussed and that the Manual does not really deal with this matter. You are free to follow the Parliamentary practice and say that some day must be fixed. If the Government cannot fix a day, very well, it is their responsibility.

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XV

OFFICIALS AND ELECTIONS

"We want to go before our people with our policies and programmes, and we want to ask the electors to elect fairly and squarely anyone like that."— Jinnah.

When, following the enforcement of the Government of India Act of 1935, new elections were to be held for the Legislatures, Indian political leaders wanted to make sure that the Government officers could not interfere with the electoral process. On the 24th of September, 1936, Dr. Khan Sahib, the NWFP Congress leader, tabled a Resolution in the Central Legislature to the following effect:

> "That this Assembly recommends to the Governor-General in Council to take immediate steps to secure that public servants do not interfere, directly or indirectly, in the ensuing elections to the reformed Legislatures."

The Resolution was debated on the first of October, 1936. Speaking on the Resolution, Dr. Khan Sahib mentioned some incidents to prove his contention that the bureaucracy was not acting strictly in accordance with the rules of impartial behaviour. He said that at one of the election meetings he was addressing at Bahadar Kale, a village in Peshawar Tehsil, which was attended by about 6,000 people, the police had provoked disturbances. In Kohat, Section 144 was imposed when permission was sought under Section 30 of the Police Regulations to hold an election meeting. Similarly, Section 144 had been promulgated in Peshawar. He said the District Magistrates and the Sessions Judges, most of whom had served in the Army, suffered from the disease of 'unfair discipline'. According to him it was necessary for the Government

to make a public commitment that the Government officers would not interfere in elections.

Sir Muhammed Yaqub moved an amendment to the Resolution to the following effect:

> "That at the end of the Resolution the following be added:
>
> 'But unruly conduct, demonstrations which are likely to cause the breach of the peace, the singing of provocative songs and slogans, and pronouncing religious ban against any candidate, or persuading voters to vote or not to vote in the name of religion should be stopped by the local authorities with strong measures.' "

Sir Nripendra Sircar, the Law Member, informed the House that the Government was ready to accept the Resolution as well as the amendment. He said: "On behalf of the Government, I am authorised to accept, and I do accept this Resolution......I am authorised to accept the Resolution as also the amendment, and I say either or both of them......I am confining myself only to Government servants."

Maulana Shaukat Ali spoke in support of the Resolution and he opposed the amendment. The Resolution was eventually talked out after the Home Member, Sir Henry Craik, had assured the House that the Government would make every effort to ensure free and fair elections.

In his speech, which follows, Mr. Jinnah supported Dr. Khan's Resolution and termed the amendment as absurd:

Sir, it is very unfortunate indeed that the discussion has drifted into totally irrelevant channels. I congratulate the Hon'ble the Law Member who spoke on behalf of the Government and laid down in his speech a very sound, and indeed the only possible principle; and I was glad that he indicated that the Government were prepared to accept the Resolution. Now, what is the Resolution? I agree with the Leader of the House that Government cannot possibly guarantee the behaviour or the conduct of public servants. They can only deal with the Government servants. There I quite agree. With that modification let us understand what is really the object of this Resolution. I quite agree that in a large organisation, with the changing times, to which many of our bureaucratic friends, especially in the various districts, are not accustomed to yet, they are liable to go astray, and there is no doubt that they have gone astray. On the other hand, I quite understand that allegations may be exaggerated—may be in some cases unfounded. We are not discussing that now.

But, I think the Government will recognise—and I think the Hon'ble the Leader of the House who spoke on behalf of Government will recognise—that we have had sufficient evidence to justify the tabling of this Resolution on the floor of this House. I am glad that the Government have taken up an attitude of vigilance and I hope that the Government of India will maintain that vigilance and see that no Government servant is allowed to interfere with the elections, directly or indirectly. When you use the phrase 'directly or indirectly', what does it mean? It does not mean that if any offence is committed, if any law is broken then those Government servants will fail to perform their duty. It does not mean that. What is the use really of having an absurd amendment of this character? It goes without saying. All the laws are not abolished; all the officers of the Government will not cease to function. It is an absurd thing to suggest a thing like that......

SIR MUHAMMAD YAKUB: If the amendment is

absurd, it is as absurd as the Resolution itself; both stand on the same footing. When there are laws, what is the use of asking the Government to do this?

MR. M. A. JINNAH: I am really astonished at the capacity of my honourable friend who interrupted me. Cannot he follow a simple thing like this? That there is no other remedy open to us. If a Government servant influences an election, it is not illegal; it is not criminal. He is entitled to do it, except that he breaks a rule of the service; and that rule has been laid down in Great Britain and in this country for the conduct of Government servants. When we find that there are symptoms, that there is some evidence, that this rule is being broken, I cannot prosecute a Government servant if he influences my voter. There is no law against it. I can only appeal to the Government and I can only say to the Government, "Please see that these very rules which are fundamental for the conduct of your servants are observed". Therefore, the Resolution is not at all absurd. It demands that these rules are observed and enforcd by Government. But the amendment assumes that if the Resolution is passed, then all the laws, criminal and civil, and laws relating to election and all other matters will come to a standstill and will not operate. The absurdity is that. Therefore, I do not think I need dilate any more on this question. I think the House ought not to misunderstand me—please don't think for a single moment that I am approving of hooliganism. Don't think that I am approving of, or that I am holding a brief for, the conduct of some members of the Congress. And Congress is a big organisation. Congress is a party of thousands and thousands of people all over the country. Those who belong to the Congress are not servants of the Congress. They are not paid by the Congress and it is not easy for them to control individuals.

SIR ABDUL HALIM GHAZNAVI: Paid by whom?

MR. M. A. JINNAH: Not by you. You would generally like to be paid for what you do! I am not defending it, and I think, as the Hon'ble the Leader of the House pointed out, such conduct has already been condemned by the leaders of the organisation, and I have no doubt that honourable

Members sitting here will endorse when I say that we do not desire hooliganism. We want to go before our people with our policies and programmes, and we want to ask the electors to elect fairly and squarely any one they like. But, Sir, during the course of elections and party controversies, even in the most regulated countries, a certain amount of excitement, a certain amount of disorder is but normal and natural. What happened in England only the other day? Sir Oswald Mosley, the leader of the Fascist Party—which he is starting in England—what happened to him?

MR. F. E. JAMES: Stoned.

MR. M. A. JINNAH: But there is the law which can deal with it.

MR. F. E. JAMES: It was not an electioneering speech.

MR. M. A. JINNAH: Therefore, I say why mix up these two questions, namely, a party controversy, parties fighting for elections, why mix up that question with the question whether the Government should be vigilant and see that the Government servants do not influence or take part, directly or indirectly, in the election? Why mix that up? Sir, I have done. I am glad and I say I congratulate Government indeed for taking up the right stand that they have done in enforcing their own rules.

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XVI

THE SHARIAT BILL

> *"Even today, the economic position of woman is the foundation of her being recognised as equal of man and share the life of man to the fullest extent."— Jinnah*

The Muslim Personal Law *(Shariat)* Application Bill, which had been introduced in the Central Legislative Assembly of India by Hafiz Mohammad Abdullah, a Member from the Punjab, was referred to a Select Committee and, after the report of the Committee, the Bill was taken into consideration on the 9th of September, 1937.

The object of this measure was to apply Islamic Law in place of rules of customary law, by which most of the Muslims of the agriculturist classes in the Punjab, North-West Frontier Province, and some other areas of British India were governed, in matters like succession to property and its alienation, etc.

Though the scope of the Bill, as originally introduced in the Assembly, was quite wide and it was intended to cover most of the matters connected with the devolution and disposal of property, the purview of the proposed legislative measure had substantially to be whittled down before the Select Committee could make its report. This was because of the coming into force, in the meantime, of the Government of India Act of 1935, under which legislative powers in respect of agricultural land came to vest exclusively in the Provincial Legislatures. Therefore "all questions relating to agricultural land" were excluded from the operation of the Bill which was pending in the Central Legislature.

Many undesirable features of the rules of customary law,

like its inherent uncertainty and expensive and long litigation that it usually involved, were pointed out by many Members who participated in the debate. But, admittedly, the real object of the Bill was to bring about an economic amelioration of Muslim women who were generally denied their rights of inheritance guaranteed to them under the Islamic Law.

A few days before the motion for discussion was to be made it was realised by the Muslim group in the Assembly that the passage of the Bill was not going to be an easy matter. Serious objections were being taken to it from many sides in the House. Some Muslim Members, who otherwise were ardently in support of the laws of *Shariat,* had now come to think that it was doubtful whether the Bill, after the amendments by the Select Committee, would be of any use at all, because, as was pointed out by one Member, about 99 per cent of the total property held by the Muslim community in India was agricultural land, which was going to be excluded from the operation of the proposed law.

Some non-Muslim Members, on the other hand, thought that if the Bill was passed, in the form in which it had received the approval of the Select Committee, it would mean not only that customary rules of inheritance, etc., would stand abrogated, but some statutory laws, like the Limitation Act, the Guardianship Act, the Registration Act and many other statutes would stand repealed, as far as property transactions between the Muslims were concerned.

Yet another fear was entertained by some of those Muslim Members who belonged to the feudal aristocracy. They thought that in future succession to their *jagirs* would also be regulated by the rules of Muslim Law and females would come to have a share in it.

Finally, mention may be made of the objection taken by one Muslim Member, namely, Sir Mohammad Yamin Khan. He appeared to be greatly perturbed because of the use of the word '*Shariat*' in the title of the Bill and in its most important operative clause. In his view, if only the phrase 'Muslim Per-

sonal Law' was used it would mean that the Court would apply the law of that particular Muslim sect to which the parties to a dispute belonged, but with the addition of the word '*Shariat*' the Court would be quite free to apply rules accepted by any school of Muslim Law and even to evolve an absolutely new rule based on a fresh interpretation of the original sources.

It was in this situation of a generally unfavourable thinking about the Bill that a meeting of the Muslim Members of the Assembly was held and it was decided that Mr. Jinnah should be asked to pilot the Bill and to move such amendments as appeared to him to be necessary to make the Bill effective for the purpose for which it had been conceived, and also to give it a form that should be acceptable to as large a section of the House as possible.

It was by no means an easy assignment for Mr. Jinnah. A perusal of the proceedings of the Assembly on this Bill, only a part of which is being reproduced in this chapter, would show with what diligence and thoroughness Mr. Jinnah had prepared himself to meet all the possible points that could be raised against the provisions of the Bill or in respect of the amendments of which he or other Members had given notice. Throughout the debate he remained alert and attentive and would immediately intervene whenever any point came up which required a clarification. He was able eventually to bring round all sections of the House to agree with him and the Bill was unanimously adopted.

The debate on the first reading started on the afternoon of the 9th of September, 1937. On that day, besides the Mover, Mr. H. M. Abdullah, who made a brief speech, others who participated in the discussion were Sahibzada Abdul Qaiyum, Sir Muhammad Yamin Khan, Mr. Mohammad Anwar-ul-Azim, Khan Bahadur Sheikh Fazl-i-Haq Piracha, Maulvi Mohammad Abdul Ghani, Qazi Muhammad Ahmad Kazmi and Mr. Jinnah. The general discussion could not conclude on that day and it was resumed on the 16th of September, which was the next day for Private Members' business. After six more Members, namely, Mr. George Joseph, Syed Ghulam Bhik Nairang,

Maulana Zafar Ali Khan, Dr. G. V. Deshmukh, Maulana Shaukat Ali and Mr. M. S. Aney had spoken on it, the motion for taking the Bill into consideration was adopted.

Mr. Jinnah then moved his amendment to clause 2 of the Bill. As out of all the amendments, the one to clause 2 gave rise to more controversy than any other, the purport of Mr. Jinnah's amendment may be briefly stated. Moreover, properly to appreciate some of the objections that were taken to the phraseology of other parts of this clause and what Mr. Jinnah said in its elucidation, it will be helpful to quote clause 2 of the Bill, as it was reported by the Select Committee, and the amendment proposed by Mr. Jinnah.

Clause 2 in the Bill said:

"Notwithstanding any custom, usage or law to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *Mubara'at*, maintenance, dower, guardianship, gifts, trust and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law *(Shariat)*.

Mr. Jinnah's motion read:

"In clause 2 of the Bill, for the words 'usage or law' the words 'or usage' be substituted."

Against this an amendment was also moved by Mr. R. F. Mudie, on behalf of Government. As one of the speeches Mr. Jinnah made while he opposed Mr. Mudie's amendment is being included in this chapter, it appears to be necessary to reproduce this proposed amendment also:

"That to clause 2 of the Bill, the following be added:

'except in so far as that law has been either expressly or by necessary implication altered or abolished or is opposed to the provisions of any legislative enactment.

Provided that nothing herein contained shall effect the power of a Court, in the absence of specific law, to apply to the decision of any case the principles of justice, equity and good conscience'."

As the excerpts of the proceedings which we have selected would sufficiently bring out the main points in issue, it does not appear necessary on our part to make much comment. However, one or two points may be mentioned.

As anyone having some knowledge of this branch of law would know, it would not have made any practical difference whether, along with the phrase 'Muslim Personal Law', the word '*Shariat*' was retained in the Bill or not. Then why did Mr. Jinnah so strongly oppose Sir Muhammad Yamin Khan's proposal that '*Shariat*' be omitted from the title and clause 2, of the Bill? Most probably the reason was that it was felt that if the word '*Shariat*' was not there, the great sentimental appeal of the Bill to the Muslims of India would be missed.

As already pointed out, the Bill in itself had very limited scope. But it had a great impact on the future course of legislation dealing with women's rights in property and the marriage laws.

Custom was mainly applicable in the Punjab and the North-West Frontier Province. The latter had, of course, already independently taken a very progressive measure in the form of the North-West Frontier Province *Shariat* Application Act of 1935. Now with the passing of the *Shariat* Bill by the Central Legislature, there started a movement for a similar enactment for the Punjab also. But either the movement was not strong enough or the resistance to it from the landowning classes of this Province was too strong, because it

was only after a lapse of more than ten years that a law abrogating custom in favour of Muslim Law in respect of rights of females in agricultural land was passed by the Legislative Assembly of the Punjab.

In any case, this awakening of a consciousness of the Muslim women's rights had an effect on the Hindu Society as well and it was in the same year that a law giving some property rights to Hindu women was also passed by the Indian Legislature.

So far we have mentioned only that part of the *Shariat* Bill which dealt with property But there was one other provision in the Bill which was of an equal, if not greater, importance in its bearing on the general movement of emancipation of Muslim women in India. Under clause 5 of the Bill the District Judge was given a new jurisdiction under which he could "on petition made by a Muslim married woman, dissolve a marriage on any ground recognised by Muslim Personal Law *(Shariat)*."

This clause, which became Section 5 of the *Shariat* Act, had the effect of a breakthrough in the so far quite formidable anti-female front of the reactionary forces, and it was made possible, two years later, for the progressive Muslim politicians to bring on the Statute-book the Dissolution of Muslim Marriages Act of 1939, by which the law on this subject was substantially liberalised in favour of Muslim women. The two amendments, one moved by Mr. Jinnah and the other by Mr. Mudie were both put to vote after they had been debated for a considerable length. Mr. Mudie's amendment was negatived and that of Mr. Jinnah was adopted by the House.

Speaking on his motion "That the Bill to make provision for the application of the Muslim Personal Law *(Shariat)* to Muslims in British India, as reported by the Select Committee, be taken into consideration", the Mover of the Bill said that the object of the measure was to replace the customary law by the *Shariat* law in certain matters where the parties to a dispute were Muslims. It also helped the weaker

sex as it enabled the women to succeed to the ancestral property and to claim dissolution of marriage on certain grounds.

Sahibzada Abdul Qaiyum (NWFP) said he was in sympathy with the objects of the Bill. There was a great awakening among the Muslim masses, including the women. For the first time the Muslim women in India had given expression to their strong feelings against the dead hand of customary law which had reduced them into the position of chattels. Declaring that the Bill was long overdue, Sahibzada Abdul Qaiyum wanted the Muslims of India to follow the Muslim Personal Law as far as they could. He said custom was a horrible thing and by endorsing the principles of the Bill the Members would be doing justice to millions of Indian women who professed the Muslim faith. He hoped that other communities would also bring similar measures and in India women and men would be treated equally in the eyes of law in all respects.

Sir Muhammad Yamin Khan said there was no customary law in his Province (U.P.) and the Muslims were guided by the Muslim Personal Law. He did not stand in the position in which the people coming from the Punjab or the NWFP were. Referring to Sahibzada Abdul Qaiyum's observation that the word *'Shariat'* frightened some people, he said he might be included among them because as a Sunni, Hanafi Mussalman he understood *'Shariat'* in a different sense from his Shia friends. "Therefore, the word *'Shariat'* in this Bill frightens me," he said, "as we do not know in what sense it has been used. How can we have a common law enacted for all the Muslims of India?"

QAZI MUHAMMAD AHMAD KAZMI: The word *'Shariat* is not in the Bill.

SIR MUHAMMAD YAMIN KHAN: It is used in brackets after the words 'Personal Law' in clause 2, and I object to that word being there.

MR. M. ASAF ALI: What is your concrete suggestion?

SIR MUHAMMAD YAMIN KHAN: I suggest that the word in the brackets should be dropped.

QAZI MUHAMMAD AHMAD KAZMI: You ought to move an amendment to that effect.

SIR MUHAMMAD YAMIN KHAN: If the Hon'ble Member has no patience to hear me, then the best thing for him to do is to go into the lobby and smoke there, if he likes.

MR. SRI PRAKASA (Allahabad and Jhansi Divisions): Will the Hon'ble Member be satisfied if the word is spelt "backward"?

SIR MUHAMMAD YAMIN KHAN: The Hon'ble Member has never been taken seriously in the House, and what is the use of his interruptions?

I also want that the word *'Shariat'* in brackets should be dropped. These words 'Moslem Personal Law' are quite explicit..............

MAULANA ZAFAR ALI KHAN: How will you translate 'Personal Law' in Urdu, Persian or Arabic What is the synonym of *'Shariat'?*

SIR MUHAMMAD YAMIN KHAN: This Bill is not brought in the language of Arabia nor in the language of Persia or in Urdu. This Bill is introduced in the English language and, therefore, we must try to understand it as such. Personal Law is understood now as administered by the Courts. If a Muhammadan belongs to the Sunni Jamaat, Sunni law applies to him: if a Muhammadan belongs to the Hanafi Jamaat, then Hanafi law applies to him.

A MEMBER: We are talking of Muslims, and not of Shias or Sunnis.

SIR MUHAMMAD YAMIN KHAN: There is no one law as far as the Muslims are concerned. There is a difference, unfortunately, between Shia Law and Sunni Law, however much my friend may ignore it.

MR. M. ASAF ALI: Will the Hon'ble Member kindly throw a little more light on the subject? How were such cases

decided before the Anglo-Muhammadan law came into India? Is not *Shariat* law?

SIR MUHAMMAD YAMIN KHAN: Yes. I must suppose that my honourable friend knows it. He is a barrister of 25 years standing.

MR. M. ASAF ALI: 27 years, if I may correct.

SIR MUHAMMAD YAMIN KHAN: I stand corrected.

MAJOR NAWAB SIR AHMAD NAWAZ KHAN (Nominated Non-Official): So far as succession goes, Shia law and Sunni law are one and the same. The difference consists in the proportion of shares with which we are not at present concerned here.

SIR MUHAMMAD YAMIN KHAN: When he says that Shia law and Sunni law are one and the same and only the proportion of shares is different, as a lawyer, it gives me horror.

MR. M. A. JINNAH: May I ask the Hon'ble Member—I want to understand whether he means to say that under these words, as they are now embodied in the Bill, in cases where the parties are Muslims, the law shall be the Muslim Personal Law *(Shariat)?* Does he wish to convey that every Mussalman will be governed by Hanafi Law if this Bill is allowed to stand as it is?

SIR MUHAMMAD YAMIN KHAN: It may be argued in a Court of law that the Muslim Shariat Law must be the law as is embodied in the *Shariat.*

MR. M. A. JINNAH: I am talking of this Bill.

SIR MUHAMMAD YAMIN KHAN: If the word *'Shariat'* is there I can argue in a Court of law that the succession should be according to the *Shariat* and not the personal law of the deceased.

MR. M. A. JINNAH: Personal Law *(Shariat)?*

Mr. Muhammad Anwar-ul-Azim (Chittagong Division) said it was a pity that it had taken too long for a Bill of the kind under discussion to come up in the Assembly. Regarding

the use of the word *'Shariat'* in Clause 2, he said: "A controversy has been raised by my honourable friend, the knight from Meerut, whether *'Shariat'* should be bracketed after 'Personal Law.' Erudite as he is, experienced as he is in worldly affairs, I should have thought that he could have surely translated 'Personal Law' by no other word than by *'Shariat'* because this is the only word which is understood by the people at large, so far as the Muslims are concerned. I think that the insertion of this word *'Shariat,'* far from doing any harm, has made the thing more clear and expressive."

Khan Bahadur Shaikh Fazl-i-Haq Piracha gave his wholehearted support to the Bill. He was glad that almost all the Members of the Select Committee were in favour of the Bill, except for a few minor objections "which would well be covered by the proposed amendments of the Hon'ble the Leader of the Independent Party." He said the amendments suggested by Mr. Jinnah would render the Bill optional and this was contrary to his wishes, but he accepted the position that Mr. Jinnah wished to facilitate the passage of the Bill without a division. As regards dissolution of marriages, he pointed out that under the Islamic Law the decision must be given by a Muslim Judge. Though no provision was made in the Bill, he hoped that the Provincial Governments would feel it convenient to make such arrangements.

Maulvi Muhammad Abdul Ghani (Tirhut Division) said he supported the Bill as it stood because he did not favour the amendments. Regarding the point raised by Sir Muhammad Yamin Khan, he said: "Then, there is the controversy of bracketing the word *'Shariat'* after the words 'Personal Law'. But what is 'Personal Law' after all? I almost rose from my seat to ask my honourable friend for a translation of the words 'Personal Law', but he would not give me a chance for doing so. Nor did he offer any translation of that term even though it was demanded by other Hon'ble Members. I very much doubt if my honourable friend knows the meaning of the word 'Personal Law', and for that reason I am sorry for him."

Qazi Muhammad Ahmad Kazmi pleaded that since very

limited time was allotted to Private Members' Bill, Members should desist from speaking unless they had something very important to say.

Referring to Sir Muhammad Yamin he said: "Probably, the learned knight has not seen the real necessity for which this Bill has been brought before this House. Probably he is not aware that there are the Punjab Laws Act, the Oudh Laws and other Acts which make the customs of the country override the Personal Law of the Muslims."

SIR MUHAMMAD YAMIN KHAN: I may inform the Hon'ble Member that I have seen all those laws.

QAZI MUHAMMAD AHMAD KAZMI: Had he only seen those laws, probably he would not have objected to the words 'or law.'

Now, I take the next point on which my honourable friend, Sir Muhammad Yamin Khan, waxed very eloquent, the word *'Shariat'*. He said that the word *'Shariat'* could not mean anything.

SIR MUHAMMAD YAMIN KHAN: I never said that.

QAZI MUHAMMAD AHMAD KAZMI: The word *'Shariat'*, according to him, means something which he does not understand.

To me the word *'Shariat'* means Muslim Personal Law and nothing else, and if he thinks it means anything else, then he is mistaken. That is the reason why this word *'Shariat'* is the most appropriate word.

MR. M. S. ANEY: Is *Shariat* different from the law of Quran?

QAZI MUHAMMAD AHMAD KAZMI: The question has arisen as to what is Muslim Personal Law. You will find even in elementary text-books that the law of Quran is the Muhammadan Law. My honourable friend must be aware that the

sources of Muhammadan Law are the Quran, the Hadis, i.e., the traditions, *Qayas* and *Ijma*.

SIR MUHAMMAD YAMIN KHAN: The Shias have never accepted that.

QAZI MUHAMMAD AHMAD KAZMI: Have they accepted the first one, or the second one, or the third one?

SIR MUHAMMAD YAMIN KHAN: No.

QAZI MUHAMMAD AHMAD KAZMI: Then, the Shias have never accepted either the Quran or the traditions or the *Qayas*. If that is the allegation that has been made by the Hon'ble Member about Shias, then, I am afraid...............

SIR MUHAMMAD YAMIN KHAN: I said they have not accepted the first *Khalifa*, or the second *Khalifa* or the third *Khalifa*. I thought he meant them after using the words *"ijma-ul-ummat."* I am sorry if I misunderstood.

QAZI MUHAMMAD AHMAD KAZMI: When I was talking of the sources of law of Islam, my honourable friend understood me to mean the *Khalifas*. The *Khalifas* were never the sources of the law of Islam as far as I know, and the mistake is probably on account of some misunderstanding that the sources of Islam mean the *Khalifas*. That was never my contention. The law of Islam is *Shariat*.

At this stage Mr. Jinnah made the following speech:

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Sir, I thought I would wait until I heard the Government view on this Bill but evidently Government have no view at all. The principle of this Bill, as I understand, and its object, is that, hitherto, amongst certain classes who are the followers of Islam there prevails a custom or usage by which they are governed in matters of succession and inheritance. These customs are age-old and they have been pursuing them for centuries. Some customs have been established in Courts of law and have in fact the force of law. Some customs are nebulous, and some are put up as they may suit the parties concerned. But as we grow and as India

has developed, the customs which are still not established are sought to be established at the cost of a great amount of expense and prolonged litigation. Now, Sir, as I said, the principle underlying this Bill is to secure to the female heirs their due share according to Muhammadan Law. According to the customs and usages that have prevailed, the position of the female heirs has been a very precarious one. If a man dies his widow is only entitled to maintenance. When the question arises as to what maintenance she is entitled to, it is always a very difficult question to decide, because when a son or male heir succeeds to a large estate, he tells the widow that Rs. 100 is quite enough for her although it may be an estate of ten or twenty or thirty lakhs; and then invariably litigation arises. Then, as some Hon'ble Members know, the result of that litigation is that the widow claims maintenance according to the position in which her husband lived, according to the estate he has left, and that leads to very lengthy litigation and complicated inquiry, as to what estate was left and what is to be awarded, and so on. Similar is the position of daughters and female heirs. I will not dilate on it any more, but I think that the House will agree that the state of things is not very satisfactory, and I sumbit that the Islamic code of law is most just because the shares are defined there, namely, the daughter gets half the share of the son, and similar is the position of female heirs. If she gets half in her own right she is the sole mistress and master of that share of hers; and in these days, and even in earlier days, and even today, the economic position of woman is the foundation of her being recognised as equal of man and share the life of man to the fullest extent. Therefore, that being the principle, namely, to avoid this uncertainty and to avoid the costly litigation that occurs for any of these customs not being defined or ascertained, it is desirable that, at any rate, we should secure to the female heirs their proper share according to the Muslim Law.

Then, with regard to the other matters which are enumerated in the Bill, it seems that there is no difficulty. I do not think we are introducing or enacting a law which is in any way going back, but it is a more progressive and

more advanced system of law than the customs and usages that are at present governing these various matters. You have got other matters enumerated there and, therefore, that really is the principle of the Bill. I, therefore, wholeheartedly support the principle of the Bill.

Having said that, there are certain very serious difficulties which we have to face, and things have been acted upon and laws have been enacted in this country; and, therefore, the question whether the word 'Law' should remain in that Bill or to what extent we should meet that difficulty will be a question that we will consider when these various amendments come before us. There is one point which I should like to mention, and I did try to follow my honourable friend, Sir Yamin Khan, with regard to his point. I find that as the language of this Bill goes, of course, anything is possible for one to argue in a Court of law. You can always raise a dispute, the doors of the Court are always open, and I can always concede to Sir Yamin Khan that whatever Bill you may pass, there will be some people who will go to a Court of law for a construction of some clause or some word. But that is no reason why we should not take the utmost care and caution and see that there is absolutely no doubt left as far as we humanly can help. Now, 'Muslim Personal Law' is mentioned there, and Sir Muhammad Yamin Khan admits that if it is stopped there, there will be no difficulty, and it is quite obvious to any one who knows anything about the Muslim law that there are different schools of law, that there are certain variations and certain differences which have come about by means of interpretation of great jurists on Muslim Law. It is interpretation, but the fountain source of that law is *Shariat*. . . .

SIR MUHAMMAD YAMIN KHAN: The fountain is the Quran.

MR. M. A. JINNAH: May I point out to my friend what Mr. Wilson says in his book?

SIR MUHAMMAD YAMIN KHAN: He may not be correct.

MR. M. A. JINNAH: Then, there is nothing in this

world which can be correct and the only correct thing is what the Hon'ble Member says. There is no use of asserting that every thing is incorrect and the only thing that you say is correct. I am trying to persuade my friend to examine it carefully, and I assure him that we don't want to tie ourselves up into knots. If there is the slightest ground for it, at least I am prepared to consider it, but I was trying, *prima facie*, to persuade my friend to see that there is no substantial point in this. This is what Wilson says at page 6:

"The Muslim Sacred Law (*Shariat*)...............

I think my friend is thinking perhaps of that meaning of '*Shariat*—Muslim Sacred Law.' Now, Muslim Sacred Law in English, in brackets, is *Shariat*. What do we say? 'Muslim Personal Law (*Shariat*)'. It is Muslim Sacred Law or *Shariat*, he says:

> "Muslim Sacred Law stands on a different basis. It professedly centres more round the personality and the sayings and doings of the Prophet than did even the Canon Law of the Trinitarian Christians round the personality of the deified Jesus. And its scope is infinitely wider. It enters into the minutest details of the daily lives of men, women and children, private and public, religious and secular."

Therefore, when you talk of *Shariat* in that sense, it embraces the whole system of your life, secular and otherwise. When we are putting in the Bill 'Muslim Personal Law (*Shariat*)', I ask Hon'ble Members to say whether any Judge would have any difficulty in interpreting this clause and would go to the extent of saying that 'no matter whether you are a Sunni, Hanafi, Shia or Shafi or you belong to any other school by which you are governed as to your Personal Muslim Law, I will only hold you by the rule of Hanafi school of law' according to this clause. Surely, I leave it to the House to judge. I don't wish to take up any more time of the House, but I once more say this. This is really a very progressive and advanced measure, and it is certainly intended to secure a distinct benefit to female heirs who

have suffered, and it is high time that they were relieved of their suffering, and I hope the House will accept the main principle of this Bill subject to such modification as may be necessary having regard to other difficulties that are facing us.

Speaking after Mr. Jinnah, Mr. George Joseph (Madura) said he felt unhappy because he held the view that it was better not to have codification in favour of maintaining what might be called the personal law of the various religions and communities. He strongly held the view that as far as succession at least was concerned it should be a matter of territorial law in which it should be possible for anybody who wanted to know the law to look up some Code and really have the succession maintained in terms of that Code. So far as he understood, if the Bill was passed the customary law in different parts of the country would be replaced by a "rigid and orthodox interpretation of Muslim Law as laid down in their sacred books". He added: "I am particularly thinking of one community in my part of the country—I mean the community known as Moplahs, amongst whom—I do not say it is true with reference to all Moplahs, but with reference at least to a considerable section of them—they observe what is called the Marumakkathayam law, the lineage being traced not through the father but through the mother."

He was sure that "the position of a lady in a Marumakkathayam family is infinitely stronger than the position that is sought to be brought about by this Bill. There, descent is traced through women; they have got a right to manage property; they do manage property in large families even today; and, therefore, I suggest, that to say that the interests of women under this Bill will be better than the Marumakkathayam application of the Muslim Law in Malabar, is not sound." However, he did not want to come in the way of the passing of the Bill because the Muslim Members of the House were really for it.

Maulana Zafar Ali Khan declared that the Muslims, who numbered more than eight crore in India, had got a law of their own, before which they bowed in utter humility and

with full submission. That law was the law of Islam. Referring to the speech by Mr. George Joseph, he said: "When he talked of the law of succession he said that personal law was imperfect and this imperfaction he applied to the law of Islam also. I do not agree with him. He must remember that the Congress says that it represents the Muslims as much as it represents the Hindus. The present movement of mass contact has been started on the same plea. The President of the Congress has wanted the Muslims to come into his fold but if the President of the Congress wants the Muslims to come into the Congress fold, he must respect the laws of Islam and the Quran. If you don't allow us to live our life according to our principles, and interfere in our domestic life, there is a parting of the ways. We cannot join you. But if you want us to help you to carry on the administration of this country according to the best interests of both Hindus and Mussalmans, you will have to appreciate our viewpoint and if you don't, there are you and here are we..................

A MEMBER: And we above all!

MAULANA ZAFAR ALI KHAN: And God above all. When an Englishman says something, you say it is reasonable. The other day you said, down with them, kick them out, and yesterday you sided with them and you became toadies.

MR. SHAM LAL (Ambala Division): Sir, I object to that expression.

THE PRESIDENT (Sir Abdur Rahim): The Hon'ble Member should not use that expression; he should withdraw it.

MAULANA ZAFAR ALI KHAN: Do you mean the word 'toady,' Sir?

THE PRESIDENT: Yes.

MAULANA ZAFAR ALI KHAN: Sir, if they are not toadies, I withdraw that word if they get offended. I hope the European group will not put a spoke in the wheel. I trust the Government Benches, too, will not interfere with free voting,

and I also hope that my friends of the Congress group, for whom I have still a soft corner in my heart—because we may come together, we will come together—I will draw you like a magnet, I will draw you..................

PANDIT BADRI DUTT PANDE (Rohilkund and Kumaon Divisions): By your arrogance and anger? You ought to be humble.

MAULANA ZAFAR ALI KHAN: If you are annoyed with what I have said, I can't help. Anyway, I hope my friends of the Congress Party will rise to the full height of their status and prove to the world that they are what they claim to be.

Dr. G. V. Deshmukh (Bombay City) said he would make no apology for taking part in the debate, for, "in my opinion, the question is not one of this political party or that political pary." He continued: "The question is one which affects forty millions of Indian women, my sisters, and, therefore, all these outside considerations of either party or politics are absolutely irrelevant and verge on the vulgar. Sir, I have always maintained that when one half of the body is paralysed, then the body cannot function, and what applies to human body equally applies to society. When one half of the society is paralysed by its not recognising the economic status of women, then I say that the society will not and cannot progress. It does not matter whether it is Hindu society or Muhammadan society or any other society."

Maulana Shaukat Ali started by saying that he would not try to deal with the legal aspect of the question, because he did not know the territorial law well, nor did he know the Islamic Law well.

A MEMBER: You are a Maulana.

MAULANA SHAUKAT ALI: Yes, they gave me the title of Maulana, because I did some little work for Islam and my Muslim brethren during the Great War, we did render some service to Islam, and our Islamic brethren appreciated our humble services, and they gave us the right to be called

"Maulana". I will support the amendments of Mr. Jinnah when they are moved. We want the complete law of Islam to be practised by us in this country and we Muslims would not rest until we get what we want for the guidance of our lives."

Mr. M. S. Aney (Berar) entirely agreed with some of the observations made by the Muslim Members who had spoken in favour of the Bill. So far as the principle of the Bill was concerned, there was no question for consideration. But he found that in drafting the Bill, as well as while considering it in the Select Committee, proper attention had not been paid to its language and it went beyond the principal object which some of the Members had in mind. He was sure that when Mr. Jinnah got up he would throw light on those questions and remove his doubts. For instance he wanted to know whether a Muhammadan would be treated as a major when he attained the age of 18 or when he attained the age of 21 under the Indian law of majority.

MR. M. A. JINNAH: I have already tabled an amendment and if it is accepted by the House, all the difficulties which the Hon'ble Member is now putting before the House will be removed.

MR. M. S. ANEY: I am putting these difficulties in order to show the necessity of the amendments to the Members with a view to enable them to understand clearly the significance of the amendment which my honourable friend Mr. Jinnah is going to move in this matter. There may be certain principles in the *Shariat* or in the various forms of the *Shariat* or in the Personal Law of the Muhammadans laying down the rules with regard to gift. But I want to understand whether the general principles of the Transfer of Property Act will govern those gifts or not.

MR. M. A. JINNAH: The Transfer of Property Act does not apply to Mussalmans.

MR. M. S. ANEY: Clause 3 of the Bill, about which I have had a great dispute last time, has been amended. My object in doing that was also to exclude the Hindu community

from certain portions of the Act. The Muhammadans were exempted but the Hindus had been included on account o the insistence of some of my friends. However, my point is this. There is the Indian Registration Act. Will that Act have an operation in regulating the gifts and other transfers made in accordance with this law or not?

MR. M. A. JINNAH: It will not apply.

After the general discussion was over, and during the clause by clause discussion of the Bill, Mr. Jinnah moved his amendment to clause 2 and made the following speech:

-ii-

Sir, I beg to move:

"That is clause 2 of the Bill, for the words 'usage or law' the words 'or usage' be substituted."

Sir, I think I ought to make my position clear generally, as there has been a great deal of criticism. With your permission and with the permission of the House, I might go a little beyond the four corners of the amendment. The last speech of my honourable friend, Mr. Aney, was a criticism of the Bill in various ways. But might I explain to the House and to my honourable friend here that the Bill is quite clear and specific. When these amendments are made, I think no reasonable person can have any complaint whatsoever. The object of the Bill is this. Of course, I am now assuming that the House will accept my amendment, and the moment the House accepts the amendment, the word 'law' disappears from the Bill, and the moment the word 'law' disappears from the Bill, all the criticisms that were offered by my honourable friend Mr. Aney will have no ground to stand—such as the Registration Act, the Transfer of Property Act, and so on and so forth—because no Statute is touched by this Bill. But this Bill has no desire really to touch any of those Statutes; we never had any desire, except perhaps those Statutes which regulate different rules of succession and disposal of property than the personal Muslim Law, such as the Taluqadars of Oudh, for instance.

My friend Mr. Aney thought that the matter was not very clear with regard to various matters. I will draw his attention to this. What is the Bill seeking to do?

> "Notwithstanding any custom"—(and if the amendment is accepted) "or usage to the contrary, in all questions regarding intestate succession (save as regards agricultural land)",--

We have saved agricultural land, because I find that, under the Government of India Act, it is a provincial subject, and therefore it cannot be dealt with here. Then, we go further:

> "Special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law", etc.

That deals with property and has nothing whatever to do with anything else. That is to say, the intestate succession to the property which has been here described is one subject; and I think it is quite clear that, when you are dealing with property, it is a question of succession and inheritance and nothing else. Then, the next subject is—"marriage". My honourable friend Mr. Aney knows what it means.

MR. M. S. ANEY: We both know it.

MR. M. A. JINNAH: Quite so. Surely it is quite obvious that the Personal Muslim Law should govern all matters connected with marriage, notwithstanding the custom or usage to the contrary, and Muslim Law is quite clear and definite, and for a lawyer it is quite easy to understand. Now, let us take other subjects. 'Dissolution of marriage'—the same observations apply; 'including *talaq*', and the different kinds of *talaq* are described here. There, again, to put it in the English language, the subject comes under the law of divorce. Now, the law of divorce is well known. There is the Muslim Personal Law, and we are seeking to do this, that it should prevail and not the usage or the custom. The next thing is 'maintenance', and there it is the same thing, as also 'dower'. 'Adoption' is taken out according to my

amendment. Then comes 'guardianship'. As to that, there is the Mussalman Personal Law which defines and regulates the question of guardianship, but that does not over-ride any other Statute, because the word 'law' goes. Therefore, the laws of guardianship prevalent according to the Muslim Personal Law will be applicable notwithstanding the custom or the usage. The 'wills' and 'legacies' are taken out. Then comes 'gifts'. There, again, the Muslim Personal Law is well known and is applicable to gifts; and we say that that law should apply notwithstandind the custom and the usage. Then, we take 'trusts and trust properties and *wakfs*'. Here, again, the law of trusts and *wakfs* is well known. Then, we say; '(other than charities and charitable institutions and charitable and religious endowments)'. These we had to exclude, because that again is a Provincial subject and not a Central subject. Now, Sir, may I know what is the real objection to this, and why is this not definite and not clear, if the word 'law' is dropped?

Now, let me tell the House that barring a very small population all over India such as the Baluchis, Moplahs, Memons, Khojas, and certain sections of the people in the Punjab, and so on, which is a small section compared to the Muslim population all over India, these small communities or sections have followed certain customs and usages which now have the force of law; and once the custom or usage has the force of law, that is the law for that community or that section of the people. And however much they may want to change, they are governed by it; and, therefore, something has got to be done in order that they should be brought under some other system of law if the custom and the usages are not desirable, and the custom and the usage which have the force of law are certainly unjust and particularly unjust with regard to the female heirs as to their succession in the property. As I said in the beginning when I spoke on this Bill on the consideration motion, the position really is that the female heirs, according to the custom and the usage which we want to set aside, get nothing but maintenance and marriage expenses. And here I certainly welcome the observations which were made by Dr. Deshmukh, that he is a champion of women. And, Sir, if he

wants any advocate to help him in that cause, he can always count upon me. I entirely agree that these customs which exclude the female heirs are, to my mind, unjust, and, not only unjust, but they are keeping down the economic position and status of women which is the foundation of their development and rise and their proper and equal share along with the men in all walks of life. Therefore, Sir, the whole object is this that Personal Muslim Law should govern the rule of intestate succession. Of course, there are different jurisprudences, and then my honourable friend Mr. Joseph is an idealist who wants to have a Utopia when we have only one system of law in this world. We have not achieved that ideal yet. Different people have different codes of law; even in Europe the rules of succession differ and in India the rules of succession differ. But, Sir, I meant to say that the code of Islamic law of succession is the most just and equitable.

MR. GEORGE JOSEPH: If that is a territorial legislation, I have no objection.

MR. M. A. JINNAH: My ambition is very limited. I do not believe in visionary ideas. I do not believe in dreaming of things. To make one territorial law for the whole of India will take a very long time indeed. I cannot wait till then. I find, I have no hesitation in saying this, that the Islamic code of law with regard to succession is the most just and equitable, most advanced and most progressive. I, therefore, say, let the Muslims at least be governed by it.

I will not take any more time of the House, and I hope that this Bill will be passed today. I do not want to be a party for delaying it any more. With these observations, I move my amendment.

Sir Muhammad Yamin Khan wholeheartedly supported the amendment moved by Mr. Jinnah and said: "As a matter of fact this was the difficulty which I had pointed out in my note of dissent. I am not wholly in agreement with certain portions of the speech of the Hon'ble the Mover of the amendment, but the effect of the amendment will be what I

desire." When the speaker wanted to refer to the speech of Qazi Mohammad Ahmed Kazmi, The President of the Assembly told him to speak only on the amendment.

SIR MUHAMMAD YAMIN KHAN: Sir, if this amendment is not made and the law stands as it is without taking out the word 'law' then we will have this clause 2 reading '*wakfs* other than charities and charitable institutions and charitable and religious endowments', which means that there is a kind of *wakf* contemplated by this Act which does not come under the above. What is that *wakf*, Sir? It comes under the purview of *wakf-alal-aulad* which has been allowed by an enactment of this Legislature. According to *Shariat* Law, which has been interpreted by the Privy Council, that kind of *wakf* was not valid. Mussalman Members may agree with the ruling of the Privy Council or not, but that is the law as interpreted. I, therefore, think that unless we take out the word 'law', we will be nullifying an Act of this Legislature which gives us the right to make a *wakf-alal-aulad*. I am sorry to find that my friend did not catch the point which I had put before him.

MR. M. A. JINNAH: I am perhaps dense: I can never catch my learned friend.

SIR MUHAMMAD YAMIN KHAN: If my friend Mr. Jinnah cannot catch me, it is a pity that even he cannot catch me.

MR. M. A. JINNAH: A great pity.

SIR MUHAMMAD YAMIN KHAN: I think Sir, this is the position. I think the whole House will agree and drop the word 'law'.

Mr. M. Ananthasayanam Ayyangar (Madras) said he had got a doubt which had not been cleared by the amendment of Mr. Jinnah and added: "Now, the word 'law' has been removed and the clause stands as 'notwithstanding the usage or custom to the contrary in matters of succession, etc., etc.' There is a further amendment from the same Hon'ble Member that so far as wills, adoption, and legacies are concerned it is open

to any individual to make a declaration and thereafter this Bill will apply to him and to his children. I find that, with respect to the Cutchi Memons of Bombay, an Act was passed in 1920 which was again amended in 1923, whereby they could declare against the application of the ordinary law of inheritance and succession which, in their case, was according to Hindu Law. Even though the word 'law' is removed from clause 2, it will have this effect, even in regard to Cutchi Memons to whom the law of 1920 and 1923 apply and under which they can modify the ordinary succession according to Hindu Law...Therefore, I want the honourable House to understand the implications of this Bill. I want to know from the Hon'ble the Mover of the amendment whether it is contemplated that, notwithstanding the Act passed by the Legislature enabling the Cutchi Memons to modify their law, which is Hindu Law, into one of Muslim Law, it should be obligatory under this law for them to adopt, immediately on the passing of this law, the Muslim Law."

MR. M. A. JINNAH: The answer is "yes". I thought I made it clear that it is a very small section indeed, of Cutchi Memons, Moplahs, and so on. The answer is "yes", so far as intestate succession is concerned; and let me inform the House and the Hon'ble Member who put me this question that I understand that more than 900 members of the community have already taken advantage of that declaration out of a total of 1,500 or 1,600; so more than half have already come under it, and the remaining portion is so small, and, as I said, what we are doing is so equitable that having regard to the general question the small portion also should be brought in immediately under the effect of this Bill.

MR. M. ANANTHASAYANAM AYYANGAR: May I suggest one thing? It is because even under this law, in its application with respect to certain aspects, that is, with respect to legacies, adoption..................

MR. M. A. JINNAH: That is taken out.

MR. M. ANANTHASAYANAM AYYANGAR: Inasmuch as a similar declaration is provided for this, and 900 of these

people have already joined, why should you force this upon the remainder......................

MR. M. A. JINNAH: I will explain when I come to that.

When the House took up the amendment moved by Mr. Mudie, reproduced earlier, Mr. Jinnah spoke in opposition to it and he said:

-iii-

I oppose the amendment. I really feel that there is a very great deal of confusion in the mind of those who are responsible for this amendment. It is really extraordinary that such a simple thing should be so confused by Mr. Mudie in his speech. Let us see how the matter stands. He thinks that he is on the horns of a dilemma and he says, "We have got it in a Statute which was passed in the North-West Frontier Province, Act VI of 1935. The words are these:

> 'Except in so far as such law has been altered or abolished by legislative enactments or is opposed to the provisions of the North West Frontier Law and Justice Regulations of 1901.'

But he forgets that the main clause, clause 2, starts with a very different language. It says:

> 'In all questions regarding succession, special property of females, marriage, dower, and so on, the rule of decision would be the Muslim Personal Law *(Shariat)* where the parties are Muslim.'

Having regard to the words of the main clause, if it was left as it was, undoubtedly a doubt will arise whether all the adjective laws were not also repealed or overruled, and, therefore, in that particular Bill, as it was worded, it may have been thought desirable to have these words, but here you cannot have the same clause, no matter what the previous clause is, and that is where the whole confusion arises. That is clear, and, therefore, this exception, which is embodied in the amendment of Mr. Mudie, is wholly unnecessary

and will lead to more confusion instead of clearing up matters. The clause that we have got before us is this, and I want the House to really carefully attend to it:

> "Notwithstanding any custom, usage or law to the contrary, in all questions regarding succession and so on the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law."

The moment we drop the word 'law' from this clause, all that you are enacting is this, that the Muslim Personal Law will apply only so far as the usage or custom is concerned, namely, that the usage or custom is over-ruled, and nothing more. We are not dealing with any other law. We are not over-ruling or repealing any other law. All that we say is that whatever the usage or custom may be, the rule of decision shall be the Muslim Personal Law. Therefore, everything else is completely safe, and I say that it will lead to enormous difficulties if you have this put in, having regard to the wording of the clause before the House, and it is obvious that it is not required. Mr. Mudie tries to frighten us by saying, "What will happen to the law of limitation, court fees", and so on. We are not dealing with them. Nothing is touched. All that remains, and I think that Sardar Sant Singh was perfectly justified, if I may say so, in giving his amendment as long as the word 'law' stood. If the word 'law' had stood there, I could appreciate the force of that amendment, but it seems to me that I cannot either persuade or convert or convince Mr. Mudie. As to the proviso, Sir, I say most respectfully, whoever may be the draftsman, what does this mean? I really want to understand what it means:

> "Provided that nothing herein contained shall affect the power of a Court in the absence of specific law to apply to the decision of any case the principles of justice, equity and good conscience."

Custom and usage having been over-ruled, is it necessary for this Legislature to tell the Court, "When you can

find nothing, you should apply the principles of justice, equity and good conscience".

MR. R. F. MUDIE: That is the general law.

MR. M. A. JINNAH: Is this the subject of an amendment to have it in the Bill and then tell the Courts of justice that this House has decided that when they can find no specific law, they must be guided by the rules of equity, justice and good conscience? That is in the General Clauses Act itself, and, therefore, I say that it might lead to a very serious misunderstanding. It is really unnecessary and it is a very harmful provision. Taking the amendment either as a whole or even separately, I most respectfully submit that it will lead to grave complications, whereas the Bill, as it is worded, is, I submit, clear and really there is no doubt whatever. All that we are seeking by this Bill is that we are overruling the custom or usage, if any, either established and having the force of law or it may be put forward to be established. Therefore, I do ask Mr. Mudie and the Government to reconsider their position, and I do trust that they will not press for this amendment.

Dr. Ziauddin Ahmad wanted to ask Mr. Jinnah a question: "Suppose we agree to his amendment and remove the word 'law', what would it mean? Suppose there are certain customs and usages which are prevalent in a particular Province and those customs and usages have been enacted in a way, so that they form part of a law."

MR. M. A. JINNAH: That is law.

DR. ZIAUDDIN AHMAD: In that case all customs and usages which have been incorporated in that law will remain as they are.

MR. M. A. JINNAH: No, no. If there is any Statute which is made an express rule, then it is the statutory law and not custom or usage.

DR. ZIAUDDIN AHMAD: If we accept Mr. Jinnah's amendment, then these laws will remain and they will not be

repealed. I should like to know what are the things which we want to repeal by the words 'usages and customs', which are outside the scope of law. If we remove the word 'law' altogether, I do not find any necessity for having this Bill at all. After all, these customs and usages which are prevalent everywhere have already been incorporated in some law and if we accept Mr. Jinnah's amendment, they will continue to be in force.

MR. M. A. JINNAH: May I interrupt the Hon'ble Member? First of all, there is a custom or a usage which has not been made the express rule of codification and yet it has got the force of law. That is to say, the Courts of justice, although it is not a Statute, will say, that this particular community is governed by this custom which has got the force of law. Therefore, you must be governed by that custom or usage. Take another case where the custom may not have been established because a particular dispute has not arisen yet in a particular community. I may inform the House that only a few days ago, in a certain matter, custom was set up which had not received the force of law. Then, custom has got to be proved by evidence and may be established. Now, what we are striving by this Bill is to over-rule a custom which has already been established or has the force of law or which may be established hereafter. We are not touching anything that has been done by codification or by an enactment of a Legislature because that is a Statute. It is only in regard to the custom or the usage that we are providing for and, therefore, we say that at present we are not going to deal with these laws.

SIR SAIYED SULTAN AHMAD (Member for Commerce and Railways): The question that has been put is this: is there any custom or usage which has not been incorporated in any legislative enactment, which is hit by your Bill?

MR. M. A. JINNAH: Yes, all over. I think Dr. Ziauddin Ahmad must have read the report of Mr. Mudie where he points out that customs prevail amongst various sections and various communities. In the note of Mr. Mudie you have got the communities of Cutchi Memons, Khojas, Bohras, Moplahs,

Baluchis mentioned. These customs are actually prevalent and have the force of law and are being enforced by the Courts of justice and that is what we want to remove. They are not the laws........................"

After the House had adopted Mr. Jinnah's amendment to clause 2 of the Bill and negatived Mr. Mudie's amendment, Major Nawab Sir Ahmad Nawaz Khan (Nominated non-official) moved an amendment to the effect that *jagirs*, other grants and assignments of land revenue should be excluded from the operation of the proposed law of succession.

Opposing the amendment, Mr. Jinnah said:

-iv-

Sir, it seems really that everybody is afraid as if some harm is going to be done to him. Perfectly right. People sometimes create fears for themselves when fears do not exist. Now, let us examine this particular case. *Jagirs* or grants, as Mr. Mudie just now told the House, are *sanads* given by the Government. In all those grants, whether it is in a *sanad* or whether it is some other form, they are made according to the terms of the *sanad*, and the terms are laid down in the *sanad* or grant itself. Are we dealing with those cases by this Bill? Is this Bill really dealing with a particular grant which is made by the Government to a particular individual which is to be governed by the particular terms of that grant? We are not dealing with that. May I draw the Hon'ble Member's attention to the Bill? We are dealing here with the succession. Surely the subject-matter of succession law......

MR. R. F. MUDIE: Why not?

MR. M. A. JINNAH: It is governed by the terms of the *sanad*. Can you change that? I shall stand corrected if I am wrong. Perhaps Mr. Mudie, who is full of this information, will tell this. Can a grantee do anything except to act according to the terms of the *sanad*? In other words, can he dispose of the subject-matter of the grant in any way he likes?

Can he by any means or by any law which is known—can that property be governed by any law of succession......

SIR SAIYED SULTAN AHMAD (Member for Commerce and Railways): Of course......

MR. M. A. JINNAH: Contrary to the terms of the *sanad?*

SIR SAIYED SULTAN AHMAD: There may be no terms at all for succession.

MR. M. A. JINNAH: Then I should like to know this. The amendment now is in a different language: in the first amendment as put forward there was put the law of primogeniture, but that cannot be altered because it is laid down in the *sanad*......

SIR SAIYED SULTAN AHMAD: It is not necessarily so. It may be in the *sanad* or it may not be in the *sanad*. There are many *jagirs* and grants like that where the rule of succession is not laid down; and yet the rule of primogeniture prevails because of the custom.

MR. M. A. JINNAH: This is according to custom: may I know why they should be exempted?

SIR SAIYED SULTAN AHMAD: That is another matter.

MR. M. A. JINNAH: Why should this small class be privileged and exempted from the ordinary rule of succession?......

MAJOR NAWAB SIR AHMAD NAWAZ KHAN: Why should agricultural land be exempted?

MR. M. A. JINNAH: Because we cannot legislate here......

MAJOR NAWAB SIR AHMAD NAWAZ KHAN: And therefore, you cannot touch the *jagirs* too.

MR. M. A. JINNAH: May I be allowed to go on? If I

understand, we cannot touch those grants which are governed by the terms of the grant as to how they devolve upon the successive heirs. This Bill does not touch them. But those grants which are nothing but mere gifts by any ordinary person giving a gift for good service or past service, that is his own property. If it is his own property, not subject to any terms of succession or devolution, then, may I know why any exception should be made at all? Either this law will apply to them or it will not apply to them. But I really do not see any reason why an exception should be made.

CAPTAIN SARDAR SIR SHER MUHAMMAD KHAN (Nominated Non-Official): Sir, may I ask one question of Mr. Jinnah? There are different kinds of *jagirs*. For example, supposing I own three or four villages and the revenue of those villages is exempted and I take the revenue, and Government do not take it. That is one kind of *jagir*, which is given by the revenue not being taken by the Government. The other is a cash *jagir* given to a *jagirdar* from any village. Will Mr. Jinnah tell me how he would treat a *jagir* in the first category?

MR. M. A. JINNAH: Your children will get it according to the Muslim Law.

SIR MUHAMMAD YAMIN KHAN: I think, Sir, that there seems to be some kind of confusion about *jagirs*.....

A MEMBER: You make it worse confounded!

While Mr. Jinnah moved several amendments on behalf of the Muslim group, all of which were adopted, some other Members also pressed their amendments for voting but most of these were lost. The Bill was finally passed on the 16th of September, 1937.

This was made possible mainly because a request of Mr. Jinnah, that the House should continue to sit for a little longer than its usual time for adjournment, was accepted, without any one raising a voice of dissent. Generally, Members do not readily agree to such a proposal, particularly

when the business before them is a Private Member's Bill. But Mr. Jinnah commanded such great respect in the House that the Members did not mind the inconvenience of sitting longer.

Now this point in the proceedings was of a considerable importance for the fate of the *Shariat* Bill. Mr. Jinnah had been able, with great effort, to convince the Members to agree to all the provisions of the Bill. There was every chance that, if the final vote on the Bill was put off to another non-official day, the consensus in favour of the *Shariat* Bill might have been eroded.

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XVII

INDIAN TROOPS IN INDONESIA

"You know that there is a universal feeling throughout India that it is a disgrace and a slur upon the honour of our soldiers who are called upon to fight for what, against those who have been struggling for their freedom and independence."—Jinnah

Early in 1946 public opinion in the sub-continent was outraged by the despatch of Indian troops to Indonesia and Indo-China. These operations formed part of the British effort to help the fellow colonial Powers (Holland in Indonesia and France in Indo-China) to recover their colonies after the Japanese surrender. But in both the areas the nationalist movements, which had been going on for decades, had acquired great strength during the years of the Japanese occupation. The war had just ended and the former colonial Powers were not able to assess the strength of the national liberation movements. They thought that after their victory over the Axis Powers they would retain sufficient force and facility to manoeuvre to be able to beat off the nationalist challenge. As subsequent events showed, their calculations were wrong. The nationalist forces in Indonesia and Indo-China had not only acquired arms but had also been able to establish effective political and administrative control over large areas in the last years of the war. The promises of independence the Allies had made to the peoples of the colonies during the War had inspired the masses not only in Indonesia and Indo-China but throughout the world. The Indian troops in the Pacific had gone through a most instructive process of political education on the battlefront and had been exposed to the nationalist stirrings in the territories retaken from the Japanese. Many of them took serious exception to their being used against the nationalists in Indonesia and Indo-China. Some of the soldiers

even went over to the nationalist side in Indonesia and were decorated by the Indonesian Republic.

In this situation an adjournment motion was moved by Prof. N. G. Ranga in the Indian Legislative Assembly on January 12, 1946. Through the motion he wanted to censure the Government of India for their failure to refuse to co-operate with the British Government in their violent operations in Indo-China and Indonesia even after the war with Japan was over. The position adopted by the Government of India was that the British and the Indian troops had been sent to Indonesia and Indo-China for the limited purpose of evauating the Japanese troops and rescuing the Allied prisoners and internees. These tasks had been assigned to them by the Allied High Command and no more.

Mr. Jinnah spoke firmly in opposition to the use of Indian troops in Indonesia and Indo-China, and his speech amply brings out his views on the struggles of the colonies to liberate themselves. The Government reply was delivered by Sir Edward Benthall, the Leader of the House. When he repeatedly said that the Indian troops had been assigned a limited task, Mr. Jinnah intervened to ask him whether the nationalists concerned had been told of this position. But Sir Edward Benthall refused to answer the question. The following extract from the proceedings reveals Mr. Jinnah's concern for the patriots in Indonesia and Indo-China:

Mr. M. A. JINNAH: Has it ever been made clear......

SIR EDWARD BENTHALL: I am very sorry but I cannot give way.

MR. M. A. JINNAH: It is a most extraordinary thing...

THE CHAIRMAN: The Hon'ble Member does not wish to give in.

MR. M. A. JINNAH: It is the most extraordinary thing and I protest against it, that the Leader of the House should

not allow me to put one single question during the course of his speech. This is unheard of.

SIR EDWARD BENTHALL: I am perfectly willing to hear the question if I am given extra time.

NAWABZADA LIAQUAT ALI KHAN: If he does not do that, we shall not hear him.

THE CHAIRMAN: With the consent of the House, I propose to give the Hon'ble the Leader of the House five minutes extra if he will answer one or two questions!

MR. M. A. JINNAH: I only wanted to understand clearly whether it has ever been made clear to Dr. Soekarno or the Prime Minister of the Republic (of Indonesia) that the Dutch Government and the British Government are willing to negotiate and come to a settlement with them on the basis of their independence and freedom being recognised.

SIR EDWARD BENTHALL: I am not fully informed on that point. I have no more information than the Hon'ble Members have in the papers.

MR. M. A. JINNAH: Then, do not use our Indian troops.

We now reproduce Mr. Jinnah's speech on the occasion:

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SIR EDWARD BENTHALL: I am perfectly willing to meet the question if I am given extra time.

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SIR EDWARD BENTHALL: I am not fully informed on that point. I have no more information than the Honourable Member has in the papers.

MR. M. A. JINNAH: Then, do not use our Indian troops.

[illegible] now resumes Mr. Benthall's speech on the question.

Mr. Chairman, the real issue that appears to be before the House is this: What has the Government of India done with regard to the situation that has developed in Indonesia both from the point of view of military and political objectives. Sir, I expected even from the military department, the War Department, if you like, of the Government of India, which is represented by the Hon'ble Member who spoke, to give us some intelligent account of what the Government of India has done. I understood that the object and the obligation of the various nations was that they must go—they have won the war, Japan has collapsed—they must go to the rescue of the prisoners of the various countries that were there. That is that. And their next business was to disarm the Japanese and see that they were promptly removed from Indonesia. Now if that was the object, namely, to rescue war prisoners and to see the Japanese off from Indonesia, I should have thought that either the Dutch forces or the Government, whichever was responsible there, would have easily managed that, because even according to the Hon'ble Member's own statement, the Indonesians were independent. There was constituted a government, there was a Republic, a Ministry. I should have thought that any member of the United Nations, to start with the Dutch, would have at once said, "We are very glad that you have got your freedom and liberty. We are very glad that the Japanese have given you this freedom and independence. We bless you and we bless your republic and we want now only one thing, and that is, to secure the war prisoners and see that the Japanese are liquidated as quickly as possible, and taken back wherever they should be." Was that ever suggested by the Dutch authorities? Was that ever suggested by the British when they went there, and was it refused? I am really shocked when I hear the Hon'ble Member saying that India must play a very great part, as she has played in the World War—fought as well and better than anybody else—and, therefore, it is befitting our dignity and our honour that our troops should be sent there to do what —to destroy the independence, the freedom and liberty of

the republic that was established there. You justify it with a great amount of falsehood which you have spread. Why not admit it if you can? And if you cannot, why do you not keep quiet? Why do you not keep quiet instead of coming here with a speech of this character, which is full of falsehoods, from top to bottom? There is not one word in that statement of facts, which is true—not one word. Why do you not admit that the policy is not yours, because what can you do? You can have no policy. Why do you not keep quiet or frankly admit it? We know, and the world knows, except the Hon'ble Member and the criminals who are persecuting and prosecuting this disgraceful policy in Indonesia. The policy is clear. The Dutch want to re-establish the imperialistic Dutch domination, to bleed the Indonesians for another unlimited period, having done so already for 150 to 200 years, and the British Policy, which is quite obvious, is to share in partnership to bleed and exploit the Indonesians by re-establishing the Dutch Imperial domination there. That is the view that I think any intelligent man must take, in spite of the camouflage, in spite of the confusing reports, in spite of the manoeuvres and machinations, in spite of the confusing reports, in spite of the statements of British statesmen. Even Members of Parliament are rebelling against this dishonesty and camouflage that is being practised there to hide the real issue. But you go on as usual. If my words can go to the British nation, I say that every Englishman who has got any shred of honour ought to shudder at being a party to the operations that are being carried on there brutally. They say, "We have done nothing". I suppose the reports coming from there are censored, but even the reports that are coming are revealing. You say, "No reprisals". You make declarations saying, "No reprisals". But what are your actions? Your hands are covered with blood and brutality. I do not know whether it is possible for the British nation to put pressure upon Parliament. I do not know whether the collective conscience of Parliament would rebel, as it ought to, in the name of justice, in the name of freedom, in the name of humanity, and in the name of the solemn declarations that the nations have made from time to time that they stand for democracy. But

whatever that may be, so far as the Government of India is concerned, I am sorry to say that the representative of the War Department has thrown no light as to what they have done. Hon'ble Members here sitting, Members of the Executive Council, perhaps, will enlighten us, apart from the military operations, on the political aspect of the issue. What has this great Executive Council of the Governor-General done? Have they any opinions? Did they collectively put their heads together? Have they expressed their opinion anywhere, to anybody, collectively or individually?

A MEMBER: They never do.

MR. M. A. JINNAH: Has the Viceroy and Governor-General discussed this matter with you or not? If so, what was the result of it and what conclusion did you come to, and what views have you expressed to His Majesty's Government? I know you have no power. But are we not entitled to know that you, as the Government of India, the Executive Council of the Governor-General, owe a duty to this country, and you are under a moral obligation and it is your business to see that the feelings and sentiments and opinions of the people of this country are at least represented to His Majesty's Government, truly and faithfully? What have you done? Sir, I read in the newspaper a few weeks ago that His Excellency the Viceroy and Governor-General has made representations to His Majesty's Government that Indian troops should not be utilised in Indonesia. Is that true? It has not been contradicted yet. Is it true? Why do you not say, 'yes; we have made representations and we shall persist that it is the feeling of the people of India that Indian troops should not be employed there'? Unless that is made clear on the floor of this House, that you have made representations, or if not, that you will make representations at once, unless you give me an undertaking on the floor of this House that you will do it—and you know that there is universal feeling throughout India that it is a disgrace and a slur upon the honour of our soldiers who are called upon to fight for what, against those who have been struggling for their freedom and independence—therefore, unless you give me an undertaking that you will make the

strongest representations to His Majesty's Government and do your best to see that Indian troops are immediately withdrawn, I shall persist that this motion should be adopted as a censure upon the Government of India.

XVIII

THE CASE OF INA

"When the time comes, my Army in Pakistan shall without doubt maintain all loyalty, whatever be the liability, and if any one did not do so, be he a soldier or be he an officer or a civilian, he will go the same way as William Joyce or John Amery."— Jinnah

One of the major issues the British rulers in India had to face after the Second World War was the case of the members of the Indian National Army who had been taken prisoner when the Japanese war machine collapsed. The story of the INA is well-known—how Dr. Subhash Chandra Bose had disappeared from India, how he had joined the Japanese, and how he had persuaded the Indian soldiers, who had surrendered to the Japanese, to form an army to fight the British. The Government of India as well as the British Government knew what was demanded of the Army discipline. But they also knew that the people of India had come to look upon the members of the INA as heroes rather than renegades. However, they realised this only when the decision to court martial the leading figures of the INA at the historic Red Fort in Delhi had been taken. The principal political parties, namely, the Congress and the Muslim League, lost no time in coming to the aid of the INA officers. High level defence committees were set up and the top lawyers in these political parties were assigned the task of acting as defence counsel. The court martial proceedings were regularly published and these reports aroused still greater sympathy for the INA men. Eventually, the Government of India had to climb down. After the Military Court had sentenced a number of INA officers, the Commander-in-Chief remitted the sentences of most of the officers, only one day after the verdict was announced.

The public opinion strongly reacted against the discrimination against those whose sentence had not been remitted as also against the continued detention of those whose cases had not yet been presented before the military tribunal. The Muslim League was particularly unhappy because the sentence passed against some of the officers, notably Captain Abdur Rashid, whom it had defended, had not been remitted.

On the 4th of February, 1946, Pandit Govind Malaviya moved the following Resolution in the Indian Legislative Assembly:

> "In view of the universal expression of public opinion throughout the country in the matter, this Assembly recommends to the Governor-General in Council to give up the trials of Indian National Army and to release immediately all men and officers of the Indian National Army as well as all other political prisoners under detention or imprisonment."

Mr. N. V. Gadgil moved an amendment to the Resolution to the effect that all men and officers of the INA, "whether under trial or undergoing sentence", should be released.

Nawab Siddique Ali Khan of the Muslim League moved an amendment which sought to replace the original Resolution with the following:

> "In view of the special circumstances under which most of the personnel of the Indian National Army joined it and in view of the policy laid down by the Government and the action taken by the Commander-in-Chief in dealing with the sentences passed by the Court Martial, this Assembly recommends to the Governor-General in Council to release all officers and men of the INA under detention or under trial."

Mr. Mason, a nominated European Member, moved an amendment to the effect that a qualifying clause, "except those charged with brutality," be added to Nawab Siddique Ali Khan's Resolution.

Mr. Jinnah's brief speech on this occasion follows:

Sir, it seems to me that the debate on this Resolution will probably go over today and I may not be present when the debate may be resumed on the next occasion. Therefore, I think, Sir, I should say a few words and put my views before the House.

Sir, the substitute Resolution of Nawab Siddique Ali Khan is this:

> "In view of the special circumstances under which most of the personnel of the Indian National Army joined it and in view of the policy laid down by the Government and the action taken by the Commander-in-Chief in dealing with the sentences passed by the Court Martial, this Assembly recommends to the Governor-General in Council to release all officers and men of the INA whether under detention or under trial."

Now, to that Resolution I understood that Mr. Mason has no objection, but he wants his amendment to be incorporated. Have I understood him correctly?

MR. P. MASON: Yes.

MR. M. A. JINNAH: His amendment is:

> "That to the Resolution which the amendment proposed by Nawab Siddique Ali Khan seeks to substitute for the original Resolution the words 'except those charged with brutality' be added at the end."

Now, I do not wish to go into the various matters that have been discussed on the floor of the House. Mr. Mason has given us a long lecture as regards the integrity and the reliability of the Army and its necessity. On the other hand. we have heard as to what is meant by patriotic duty and what a patriot should do. Sir, that is all academic. The reality is this; I think every intelligent man knows what a patriot should do. I think every intelligent man knows that the

army of a country must be maintained on the basis of complete integrity, reliability and faithfulness. All this is very elementary. That is not the question now before the House. The question before the House is this: What is the policy of the Government with regard to this subject of the Indian National Army? I do not want, Sir, to say anything which will add more to the bitterness. I do not want to say anything which will hurt anybody; at any rate, I do not mean it. I do not want to go into extraneous matters. Let us confine ourselves and concentrate on this issue which is before the House: What is the policy of the Government with regard to this matter? You thought it right to hold these trials. Well, in my judgment, it was a blunder, to begin with. After going through the trials, you reduced the judgment and the sentences passed by the Court to travesty by releasing them on the very next moment. Why did you do it? Sir, it is quite obvious to me, at any rate. You did so, because you felt—and as it was partly given out by Mr. Mason —you felt not that it will help the settlement of the political problem, but you felt that there was such an upsurge of agitation and revolt throughout the country against your policy of having put them on trial, thereafter, because of that agitation—as I think one of the Hon'ble Members said —you funked it and you were stampeded into taking this action of remitting the entire sentence. Having done that, you find now that the agitation has cooled down. There were, I believe, in England—and I read it in the newspaper —very severe comments upon this farce. I do not say that you were wrong. I say you should never have put them on trial. But, having put them on trial, and having got the judgment after days and days of trial, you funked it. You reduced it to a farce and there was severe criticism and then another blunder. The first blunder was to start with the trials, the second blunder was to make a farce of a judicial judgment and sentences passed the very next moment.

A MEMBER: Now this is the third.

MR. M. A. JINNAH: Quite, this is the third. Now you find that the agitation has subsided. You find now that you

have put yourself in a ridiculous position and under cover of this plea "charged with brutality" as the exception......

MR. P. MASON: 30th November was the date on which we announced this policy.

MR. M. A. JINNAH: I know you leave a loophole always. I have not known, Sir, for the last thirty years, but have you ever known the British Government making a statement (whose children you are) without leaving a loophole? I have not. You can always find an excuse. How many statements, how many pledges and promises you have broken shamelessly. I know why you are doing it. You are now doing it because you want to find a scape-goat and a victim. Rashid Ali is No. 1 victim, but it is not going to stop there. You will get a few more victims. You propose perhaps to go through the same farce, going through a trial, then transportation for life or may be sentence of death (I do not know), and then you will come round and say. "Yes, yes. After all waging war against the king was bad". Did not Shah Nawaz commit murder? Was he not held guilty of murder?

MR. P. MASON: No, Sir. He was not guilty of murder.

MR. M. A. JINNAH: Of course, he was. Abetment is the same as murder, Mr. Mason, you do not understand the legal language. I am sorry, your mind is more in the direction of military affairs. Abetment is the same offence. I can understand this legal language. But if you say that it was not his hand that actually killed the man and, therefore, in his case, he being an abettor, there were extenuating circumstances, in order not to give him as severe a punishment as the man who actually killed the man—I can understand that. But why was he released completely? That is what I want to know.

MR. P. MASON: I explained it just now.

MR. M. A. JINNAH: I know you explained it. But does not the Hon'ble Member see how absurd it is to say—I am assuming now that Rashid is guilty of grievous hurt—that

a man who commits grievous hurt or some injury—that that is not a lesser offence than abetment of murder? Cannot you see that? Common sense will show you that if a man is guilty of grievous hurt, that is a lesser offence in every sense of the word than murder or abetment of murder. Shah Nawaz and others were released. Why is poor Rashid made the victim of your change of policy?

MR. P. MASON: There has been no change.

MR. M. A. JINNAH: You have changed your policy. And not only this, Rashid—I am not talking now of Rashid —I am not concerned whether he is a Muslim or a Hindu or a Parsi—I am now considering your policy. Let me tell you that you are mistaken and let me advise you with all the earnestness I can command, stick to your first policy and your first thought. Release them all. No question. I am not satisfied—I have gone through the record and I am not satisfied—that Rashid is guilty of brutality.

MR. P. MASON: That is the point.

MR. M. A. JINNAH: Yes. I have spent many years of my life and I assure him that if you go through this carefully, as I have, he is no more guilty of brutality than Shah Nawaz and many others who were there at the time. Therefore, please consider it from this point of view. In order to prevent that fear, namely, that it looks farcical, you may victimise a few. Do not do it. Come out boldly and honestly. If you mean to secure goodwill, if you mean to create that feeling amongst every section of the people of this country, close this chapter completely. No more arguments, no more talk. I earnestly advise you, in your interests, in our interests; and if you will yield once in your life to this advice of mine, believe me you do not know what you will be able to achieve. If you are really honest, if you are really sincere, if you mean what you say, believe me, do it at once without delay.

MR. P. MASON: Will the Hon'ble Member assure me that he will not say next time that we were funking it?

MR. M. A. JINNAH: No. I say that this is my case. You say it is not. I say this is my inference that you funked.

Very well. If you will give me this assurance—and you must remember what I have said long long ago—do not forget it please—if you will give me this assurance that you are going to close this chapter, not only I shall not be justified in saying that you have funked, but I will say that you have behaved as a civilised Government should behave and as a conquering Government should behave. I have said that long ago. When this question came before the public, I said, if you remember—and if you do not I will send you the Press cuttings, but you must have it with you—I said that we have the deepest sympathy for these men, and I hope that the British Government will show the utmost clemency to them, the utmost clemency becoming a conqueror. You have won the war. I said that not only the men and the officers of the INA but those who have died on the battle-field, fighting for you heroically—look after their families and their children: those who have returned having won the battles, treat them properly. I do not want to go into this matter whether they fought for you or fought for me—they are human beings. Treat them as human beings; and, Mr. Griffiths, when the time comes, my Army in Pakistan shall without doubt maintain all loyalty, whatever be the liability, and if any one did not do so, be he a soldier or be he an officer or civilian, he will go the same way as William Joyce or John Amery.

XIX

ON PAKISTAN'S IDEAL

"Every one of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations."
—Jinnah

The last speech of Quaid-i-Azam Mohammad Ali Jinnah, that we include in this book, is his address as President of the first Constituent Assembly of Pakistan, delivered on the 11th of August, 1947.

The first meeting of the Constituent Assembly was held in Karachi on the 10th of August, 1947. At the start of the proceedings, Mr. Liaquat Ali Khan proposed that Mr. Jogendra Nath Mandal be elected as temporary Chairman of the House. The proposal, which was seconded by Khwaja Nazimuddin, was unanimously adopted. Mr. Mandal thereupon took the Chair.

After the inaugural address by the Chairman, the Members, including Quaid-i-Azam Mohammad Ali Jinnah, presented their credentials and signed their names in the Register.

Some business of a preliminary and formal nature was done and the Assembly was adjourned, and met again the next day, the 11th of August, 1947. On that day, the Quaid-i-Azam was unanimously, and with loud applause, elected as the President of the Constituent Assembly.

Mr. Liaquat Ali Khan made a brief speech in which he congratulated the President on his election. He was followed by Mr. Kiran Sankar Roy, Mr. M. A. Khuhro, Mr. Jogendra Nath Mandal, Mr. Abdul Kasem Khan and Begum Jahan Ara

Shah Nawaz, and then the President addressed the Assembly. It is this speech of the Quaid-i-Azam that we would reproduce in this chapter.

The importance of this address cannot be over emphasised. Quaid-i-Azam Mohammad Ali Jinnah was the creator, founder and the Father of the Pakistan Nation and State. On the 11th of August, 1947, he was not only the President of the Constituent Assembly but also the President of the Muslim League, the Party that had led the Pakistan Movement, and also he had already been designated as Head of the State, which office he was to assume within a couple of days. He was speaking on a solemn occasion, before a sovereign body charged with the responsibility of framing the Constitution for the fifth largest State in the world. Therefore, this address should be, and should always have been, considered as a statement of a fundamental policy for the new State of Pakistan, as envisioned by its great Founder.

To give an idea of the context, we are briefly quoting parts from the speeches of some of the Members.

Now, this speech of Quaid-i-Azam Mohammad Ali Jinnah has received rather a strange treatment by those for whose guidance it was delivered. Most of the Muslim Leaghe politicians who came to be entrusted with the control of the affairs of the country, after the death of the Quaid-i-Azam in 1948, were not imbued with that spirit of liberalism which was a permanent characteristic of Mr. Jinnah's political thought. The result was that this address was seldom mentioned or projected by those who wrote or spoke on the Quaid-i-Azam.

In the early fifties a high-powered Enquiry Committee pointedly mentioned, and indirectly relied on, that part of the address of Quaid-i-Azam Mohammad Ali Jinnah in which he categorically stated that politics in Pakistan should be based on the principle that "every one of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations", and that if that principle

was adopted by the Pakistani nation, then "in course of time, Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State."

When the Report of this Committee was published, as a first reaction of the Rightiest politicians, particularly of the Jama'at-i-Islami, it was doubted whether the Quaid-i-Azam had at all said what was attributed to him. But as this address is contained in the official report of the proceedings of the Constituent Assembly, its authenticity could not be challenged.

Then some other points were raised. It was said that there was a contradiction between what was stated by Quaid-i-Azam Mohammad Ali Jinnah in his address to the Constituent Assembly and what had been the stand of the Muslim League on the basic objectives of the establishment of Pakistan: Pakistan was to be an Islamic State and the views expressed by the Quaid on the import of religious differences between the various communities were inconsistent with the concept of an Islamic State, and so on.

We would offer just a brief comment on this. As far as Quaid-i-Azam Mohammad Ali Jinnah is concerned. his stand on the issues connected with Hindu-Muslim differences had always been exactly the same as he enunciated in his address to the Constituent Assembly. During his long career as a politician and parliamentarian there was not a single occasion when he said or did anything which could be described, by any stretch of reasoning, as being inconsistent with what he said as President of the Constituent Assembly. Indeed, most of his efforts were directed towards finding a solution by which differences between the Hindus and the Muslims could be satisfactorily resolved. That is why he had been called "Ambassador of Unity". That he did not succeed in this is a different matter and has nothing to do with the Quaid's political thought.

The point is that in the new State of Pakistan, the Quaid-i-Azam wanted to promote and firmly establish what he could

not do in the undivided India. That is, "You are free, you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State."

The matter was of prime importance for the Quaid-i-Azam. Looking back at the past history he says, "Indeed if you ask me this (the differences between the majority community and the minority) has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free peoples long, long ago. No power can hold another nation, and especially a nation of 400 millions souls, in subjection, nobody could have conquered you, and even if it had happened, nobody could have continued its hold on you for any length of time but for this."

Pakistan is, of course, an Islamic State. But in the opinion of the Quaid-i-Azam this was precisely why there should be greater tolerance and absolute equality between citizens in this country.

A sitting of the Constituent Assembly was held on the 14th of August, 1947, with the Quaid-i-Azam in the Chair, as President. The Assembly was addressed by Lord Louis Mountbatten, in his capacity as the Governor-General. For Pakistan, this was his last day in this office.

In his address, the Governor-General paid tribute to the Quaid-i-Azam and said: "Our close personal contact, and the mutual trust and understanding that have grown out of it, are, I feel, the best of omens for future good relations". Then he expressed a strong desire that both the new Dominions would treat their minorities on the principle of equality between citizens. In this connection the Governor-General mentioned the liberal policy that Emperor Akbar had followed in his treatment of the non-Muslims in India: "May I remind you that, at the time when the East India Company received the Charter, nearly four centuries ago, your great Emperor Akbar was on the throne, whose reign was marked by perhaps as great a degree of political and religious tolerance, as has been

known before or since. It was an example by which, I honestly believe, generations of our public men and administrators have been influenced. Akbar's tradition has not always been consistently followed, by the British or the Indians, but I pray, for the world's sake, that we will hold fast, in the years to come, to the principles that this great ruler taught us."

While speaking in reply to this address of the Governor-General, the Quaid-i-Azam said that it was not necessary for Muslims to seek inspiration from the policy of Emperor Akbar. Because, "the tolerance and good-will that the great Emperor showed to the non-Muslims is not of recent origin. It dates back thirteen centuries ago when our Prophet, not only by words, but by deeds, treated the Jews and Christians handsomely after he had conquered them. He showed to them the utmost tolerance and regard and respect for their faith and beliefs. The whole history of Muslims, whenever they ruled, is replete with those humane and great principles which should be practised by us."

The thought and policy of Quaid-i-Azam Mohammad Ali Jinnah has now received a revival in Pakistan. It is significant that Mr. Zulfiqar Ali Bhutto, Prime Minister of Pakistan, in his speech, in a joint sitting of the Parliament of Pakistan, held on the 21st of December, 1976, quoted with pride, from that part of the address of the Quaid, in the Constituent Assembly, which deals with the question of minorities and their rights as citizens of Pakistan.

While felicitating the Quaid-i-Azam, on his being elected as the President of the Assembly, Mr. Liaquat Ali Khan said that for Pakistan there could be no greater fortune than to have the Quaid as the President "of this sovereign body, to build the State which we have got through your devotion, untiring zeal, selfless service and unshakable determination."

Mr. Kiran Sankar Roy, on behalf of the Congress Party in the Assembly, paid rich tributes to the Quaid-i-Azam and said: "Mr. President, in your most amazing career, one of the most brilliant that any Indian had...............you have received many tokens of affection, you have had triumphs in many

spheres of life, and when we compare all your achievements with the honour that this House is conferring on you, it may seem to be not very important."

Explaining the policy of his Party, Mr. Roy Said, "Sir, if the Pakistan which you have in your mind means a secular democratic State, a State which will make no difference between a citizen and a citizen, which will deal fairly with all, irrespective of caste, creed and community, I assure you that you shall have our utmost co-operation."

The speaker proceeded to state, "Frankly, Sir, we are not very happy. We are unhappy because of this division of India. We are unhappy because of the partition of Punjab. We are also unhappy because of the partition of Bengal. But as this arrangement has been agreed upon by the two great parties, we accept it loyally. We shall accept the citizenship of Pakistan with all its implications."

Mr. Roy concluded his speech by saying: "Sir, you have been a great leader of the Muslims. Time has now come for you to take up the leadership of the State which includes not only Muslims, but Hindus and other communities. We invite you to that leadership and we will not fail to support you. When history writes its final judgement on your career, I hope, Sir, it will put it on record that you were not only a great leader of a great community but you were also a great leader of an entire people of a State which you have brought into being."

Mr. Jogendra Nath Mandal, in his speech, heartily congratulated the President on his own behalf and on behalf of "eight millions of Scheduled Castes, whom I have the honour to represent in this House."

Begum Shah Nawaz in her felicitation reminded the Quaid-i-Azam that in the struggle for independence many battles had had to be fought and that "on those battle-fields, the better half or the weaker half of your nation has not lagged behind."

We would now give the text of the Quaid-i-Azam's speech as President of the Constituent Assembly:

Ladies and Gentlemen, I cordially thank you, with the utmost sincerity, for the honour you have conferred upon me—the greatest honour that it is possible for this sovereign Assembly to confer—by electing me as your first President. I also thank those leaders who have spoken in appreciation of my services and their personal references to me. I sincerely hope that with your support and your co-operation we shall make this Constituent Assembly an example to the world. The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing our future Constitution of Pakistan and the second of functioning as a full and complete sovereign body as the Federal Legislature of Pakistan. We have to do the best we can in adopting a provisional Constitution for the Federal Legislature of Pakistan. You know really that not only we ourselves are wondering but, I think, the whole world is wondering at this unprecedented cyclonic revolution which has brought about the plan of creating and establishing two independent sovereign Dominions in this sub-continent. As it is, it has been unprecedented; there is no parallel in the history of the world. This mighty sub-continent with all kinds of inhabitants has been brought under a plan which is titanic, unknown, unparalleled. And what is very important with regard to it is that we have achieved it peacefully and by means of a revolution of the greatest possible character.

Dealing with our first function in this Assembly, I cannot make any well-considered pronouncement at this moment, but I shall say a few things as they occur to me. The first and the foremost thing that I would like to emphasise is this—remember that you are now a sovereign legislative body and you have got all the powers. It, therefore, places on you the gravest responsibility as to how you should take your decisions. The first observation that I would like to make is this. You will no doubt agree with me that the first duty of a Government is to maintain law and order, so that the life, property and religious beliefs of its subjects are fully protected by the State.

The second thing that occurs to me is this. One of the biggest curses from which India is suffering—I do not say that other countries are free from it, but, I think, our condition is much worse—is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.

Black-marketing is another curse. Well, I know that black-marketeers are frequently caught and punished. According to our judicial notions sentences are passed, and sometimes fines only are imposed. Now you have to tackle this monster which today is a colossal crime against society, in our distressed conditions, when we constantly face shortage of food and or the essential commodities of life. A citizen who does black-marketing commits, I think, a greater crime than the biggest and most grievous of crimes. These black-marketeers are really knowing, intelligent and ordinarily responsible people, and when they indulge in black-marketing, I think they ought to be very severely punished, because they undermine the entire system of control and regulation of food-stuffs and essential commodities, and cause wholesale starvation and want and even death.

The next thing that strikes me is this. Here again is a legacy which has been passed on to us. Along with many other things, good and bad, has arrived this great evil—the evil of nepotism and jobbery. This evil must be crushed relentlessly. I want to make it quite clear that I shall never tolerate any kind of jobbery, nepotism or any influence directly or indirectly brought to bear upon me. Wherever I find that such a practice is in vogue, or is continuing anywhere, low or high, I shall certainly not countenance it.

I know there are people who do not quite agree with the division of India and the partition of the Punjab and Bengal. Much has been said against it, but now that it has been accepted, it is the duty of every one of us to loyally abide by it and honourably act according to the agreement which is now final and binding on all. But you must remember, as I have said, that this mighty revolution that

has taken place is unprecedented. One can quite understand the feeling that exists between the two communities wherever one community is in majority and the other is in minority. But the question is whether it was possible or practicable to act otherwise than has been done. A division had to take place. On both sides, in Hindustan and Pakistan, there are sections of people who may not agree with it, who may not like it, but in my judgement there was no other solution and I am sure future history will record its verdict in favour of it. And what is more, it will be proved by actual experience as we go on that that was the only solution of India's constitutional problem. Any idea of a united India could never have worked and in my judgement it would have led us to terrific disaster. May be that view is correct; may be it is not; that remains to be seen. All the same, in this division it was impossible to avoid the questions of minorities being in one Dominion or the other. Now, that was unavoidable. There is no other solution. Now, what shall we do? Now, if we want to make this great State of Pakistan happy and prosperous we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that every one of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make.

I cannot emphasise it too much. We should begin to work in that spirit and in course of time all these angularities of the majority and minority communities—the Hindu community and the Muslim community—because even as regards Muslims you have Pathans, Punjabis, Shias, Sunnis and so on, and among the Hindus you have Brahmins, Vashnavas, Khatris, also Bengalese, Madrasis and so on—will vanish. Indeed if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free peoples

long, long ago. No power can hold another nation, and especially a nation of 400 million souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have continued its hold on you for any length of time but for this. Therefore, we must learn a lesson from this. You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State. As you know, history shows that in England conditions some time ago were much worse than those prevailing in India today. The Roman Catholics and Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God we are not starting in those days. We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. The people of England in course of time had to face the realities of the situation and had to discharge the responsibilities and burdens placed upon them by the government of their country and they went through that fire step by step. Today you might say with justice that Roman Catholics and Protestants do not exist: what exists now is that every man is a citizen, an equal citizen, of Great Britain and they are all members of the nation.

Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense, as citizens of the State.

Well, gentlemen, I do not wish to take up any more of your time and thank you again for the honour you have done to me. I shall always be guided by the principles of justice and fair-play without any, as is put in the political

language, prejudice or ill-will, in other words partiality or favouritism. My guiding principle will be justice and complete impartiality, and I am sure that with your support and co-operation, I can look forward to Pakistan becoming one of the greatest nations of the world.

INDEX

A

B

J

K

L

M

For anyone wanting to know Jinnah's mind, know what he would have liked and what not in any affairs of the state, there is perhaps no better source to go to than his parliamentary addresses. They carry the essence of his deeply considered views on an almost exhaustive variety of issues ; it will be possible from these to draw a fairly detailed profile of the society of his wishes. And his views need no interpreters, no special stretching for application. He related issues to the basic principles, which are all there, often quite specific and emphatic in his own ringing tone. The editors to the present volume were handicapped by the fact that not all the pre-independence parliamentary record was available. But the selection they have made down to his historic but often ignored inaugural address to Pakistan's Constituent Assembly shows much painstaking, intelligent discernment and acute historical consciousness. They were not just concerned with selecting the most effective specimens ; they also obviously weighed their material for possible relevance to our times, for indications of the Quaid's mind on issues that have echoes in the present. Understandably, but regrettably, many of these speeches didn't get much currency in the past, which lends them added value. The editors have also handily and at some length supplied the context of each speech. The background, the issues under discussion, and the points of conflict sought to be resolved are summarised with some thoroughness and precision. Which is not only a help to understanding but it also gives a clear idea of the odds the Quaid was contending with and the qualities he was distinguished by in that company.

The compilation must be counted among the more significant contributions of the centenary year and as an important source and impetus for a reassessment of the founder of this country.

Aziz Siddiqui in *The Pakistan Times*